

To nob

Complaint p⁶⁻⁷, 9-10, 11, 12-13, 452, 457

In Chancery of New Jersey.

Walter Cutting, Executor, et al.)
)
 versus)
)
 The North American Phonograph Co.)

Docket No. 6737

Location Y33-333

F. F. Guild &
Frederick Lumm

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Y33-333

This record was ^{also} compiled from material introduced in other cases and from materials in the document files at the Edison National Historic Site. The copies introduced in the other cases were certified copies.

EXHIBIT No. 163.

(Being Demand of Payment of Interest on Bonds.)

(COPY.)

To the North American Phonograph Co. :

Gentlemen:—I hereby demand payment of the sum of sixty-six hundred dollars interest on the bonds of your company which became due and payable on the first day of May last past.

The bearer, W. E. Gilmore, is hereby authorized to receive payment of said interest for me.

Yours sincerely,
THOMAS A. EDISON.

Orange, June 18th, 1894.

EXHIBIT No. 165.

(Being Trémain's Reply to Demand, &c.)

(COPY)

JERSEY CITY, N. J., June 18th, 1894.

THOMAS A. EDISON, Esq.,
Orange, N. J.

Dear Sir:—We are in receipt of your favor bearing date 18th inst. and in reply thereto beg to say that it is impossible to comply with your demands for the payment of the sum of sixty-six hundred dollars interest on the bonds of this company standing in your name this date and registered on the books of the company as such at this date, and said interest being due on May 1, 1894—and still unpaid.

Yours truly,

The North American Phonograph Co.

SCOTT TREMAIN,
Treasurer.

EXHIBIT No. 164.

(Being Demand Making Bonds Due.)

New York, August 6th, 1894.

The North American Phonograph Company, }
32 Park Row, New York. }

Dear Sirs:—Take notice that the undersigned, being a majority of the holders of the bonds issued by you aggregating \$300,000, dated May 1, 1892, hereby declare that the principal of all the said bonds shall be and is immediately due and payable with all arrears of interest thereon. This notice and declaration is made in pursuance of the provision made in that behalf in the said bonds for default in the payment of the interest which accrued thereon on May 1, 1894.

[Signed]

CHARLES B. CARMAN, 15 Bonds, \$15,000.

JAS GAUNT, 11 Bonds, \$11,000.

WALTER CUTTING, Exer. Estate of

R. L. CUTTING, 14 Bonds, \$14,000.

THOMAS A. EDISON, 220 Bonds, \$220,000.

EXHIBIT No. 117.

(Record of Court House Sale of Edison Phonograph
Company Stock by Thomas A. Edison.
Aug. 13, 1894.)

WHEREAS, The North American Phonograph Company is indebted to me in upwards of seventy-eight thousand dollars, with interest, as evidenced by the promissory note of said Company, dated April 1, 1894, to secure which the said Company has pledged to me as collateral, twelve thousand shares of the capital stock of the Edison Phonograph Company, and whereas the said indebtedness has matured and is unpaid,

Now, THEREFORE, I hereby authorize and empower James E. Howell as my true and lawful attorney for me and in my name to make sale of the said stock so pledged to me, and to make title thereto to the purchaser or purchasers thereof, and to take all lawful ways and means to sell and dispose of the said stock and to realize thereon for the payment of said indebtedness.

IN WITNESS WHEREOF, I have hereto set my hand and seal this fourth day of August, eighteen hundred and ninety-four.

THOMAS A. EDISON.

Signed, sealed and delivered, in the }
presence of }
James W. Gladstone.

State of New Jersey, }
County of Essex. } ss.

Be it known, that on the 10th day of August, 1894, before me, a notary public, in and for the State of New Jersey, personally came W. E. Gilmore and John F. Randolph, being duly sworn, deposes and state that they did on the sixth day of August, 1894, call at the office of The North American Phonograph Company, No. 32 Park Place, New York, and presented to Mr. Scott Tremaine, the Treasurer, the following notice:

ORANGE, N. J., August 6, 1894.

The North American Phonograph Co.,
32 Park Place,
New York.

DEAR SIR:

Take notice that I shall on Monday the thirteenth day of August, 1894, at the hour of ten o'clock in the forenoon, at the Court House in Jersey City, sell at public sale, twelve thousand (12,000) shares of the capital stock of the Edison Phonograph Co., held by me under agreement with you of June 1, 1892, as collateral security.

Yours truly,

THOMAS A. EDISON.

W. E. GILMORE,

JOHN F. RANDOLPH.

Subscribed and sworn to before me, }
this 10th day of August, 1894. }

EDMUND CONDIR,

Notary Public of N. J.

Thomas A. Edison, President; A. O. Tate, Vice-President; T. R. Lombard, Manager; Scott Tremaine, Treasurer; Cleveland Walcutt, Secretary.

THE NORTH AMERICAN PHONOGRAPH CO.,
EXECUTIVE OFFICES,
No. 32 Park Place,
NEW YORK, Aug. 6, 1894.

DEAR SIR:

We are in receipt of yours bearing date 6th inst., relative to sale of 12000 shares of the capital stock of the Edison Phono. Co., held by you under agreement with us June 1, '92, as collateral security.

Yours truly,

THE NO. AM. PHONO. CO.,
S. TREMAINE, *Treas.*

State of New Jersey, }
Hudson County. } ss.

Joseph A. Dear, being duly sworn, says that he is publisher of the *Evening Journal*, a daily newspaper printed and published in Jersey City, in the County and State aforesaid, and that a notice, a copy of which is herewith annexed, was published in said newspaper for the space of six days successively, commencing on August 6, 1894.

JOSEPH A. DEAR.

Sworn and subscribed, before me, }
at Jersey City, this 13th day }
of August, 1894.

HENRY VAN WYKE,
Notary Public, N. J.

SALE OF STOCK.

The subscriber will sell at public auction at the Court House, in Jersey City, New Jersey, on Monday, August 13, 1894, at ten o'clock in the forenoon, 12,000 shares of the capital stock of the Edison Phonograph Company, held by him as collateral security.

T. A. EDISON.

SALE OF STOCK.

The subscriber will sell at public auction, at the Court House, in Jersey City, New Jersey, on Monday, August 13th, 1894, at ten o'clock in the forenoon, 12,000 shares of the capital stock of the Edison Phonograph Company, held by him as security.

T. A. EDISON.

State of New Jersey, }
County of Essex. } ss.

Jay TenEyck, of full age, being duly sworn according to law, on his oath says that on the sixth day of August, A. D. 1894, he posted five copies of the notice annexed hereto in five public places in the city of Jersey City, as follows, viz:

One in front of Wolber's Exchange, No. 49 Exchange Place.

One at corner Hudson street and Exchange Place.
One at corner of Grand and Green streets.
One at Court House in Jersey City, and
One in front of the Pennsylvania Railroad depot, Jersey City.

Subscribed and sworn before me, this }
27th day of August, 1894. }

CHAS. A. DICKSON,

Master in Chancery of N. J.

WHEREAS, Thomas A. Edison by writing under his hand and seal dated the fourth day of August, eighteen hundred and ninety-four, authorized and empowered the subscriber, James E. Howell, as his true and lawful attorney for him, and in his name, to make sale of twelve thousand shares of the capital stock of the Edison Phonograph Company, which were pledged to the said Edison, and to make title thereto to the purchaser or purchasers thereof, and to make title thereto to the purchaser or purchasers thereof, and to take all lawful ways and means to sell and dispose of the said stock, and realize thereon for the payment of the said indebtedness.

AND WHEREAS, the subscriber hereto did cause the sale of the said stock to be advertised by posting advertisements in the city of Jersey City, and advertising the same in the *Jersey City Evening Journal*, as will more fully appear by the proof of such advertisement annexed hereto and made part hereof.

AND WHEREAS, at the time and place appointed for the said sale, namely, Monday, August 13, 1894, at ten o'clock in the forenoon, I did offer the said stock at public vendue to the highest bidder, and the said Thomas A. Edison then and there bidding therefor the sum of ten thousand dollars, and no one bidding so much or more for the same.

NOW THEREFORE, in consideration of the sum of ten thousand dollars, to me in hand paid by the said Thomas A. Edison, the receipt whereof is hereby acknowledged, and in pursuance of the annexed advertisements of sale, and of the authority given to me in that behalf by the said Thomas A. Edison, I do hereby sell, assign, transfer and set over to the said Thomas A. Edison, twelve thousand shares of the capital stock of the Edison Phonograph Company sold by me as aforesaid, to have and to hold the same in as full and ample manner as the same were so held by the North American Phonograph Company prior to the pledge thereof to the said Thomas A. Edison.

Witness my hand and seal this twenty-first day of August, eighteen hundred and ninety-four.

JAMES E. HOWELL. [SEAL.]

Signed, sealed and delivered in the }
presence of }

Jay TenEyck.

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7677

In Chancery of n.
Between
Walter Cutting Esq.
vs Compt
and
The North American
Phonograph Co
Def

Bill of Complaint
Filed Aug 16 1894

Filed August
16, 1894.

Wm. W. L. Smith
Att

Y-33-333-5-81

12-15-03 L. H. H. H.
affidavit, Edm.

IN CHANCERY OF NEW JERSEY.

To the Honorable Alexander T. McGill, Chancellor of the State of New Jersey.

In Chancery complaining, show unto your Honor, your orators Walter Cutting of Pittsfield in the State of Massachusetts, in his capacity of Executor of the last Will of Robert L. Cutting, deceased, and James Gaunt of the City, County and State of New York.

FIRST. That The North American Phonograph Company was organized under the laws of the State of New Jersey by a certificate of organization bearing date on the fourteenth day of July, eighteen hundred and eighty-eight, recorded in the Office of the Clerk of the County of Hudson on the same day and filed in the Office of the Secretary of State of this State on the sixteenth day of July, then next: That it appears by the said certificate, a certified copy of which is in the possession of your orators, to which reference is hereby made, that the objects for which the said company was formed were to manufacture, trade in, buy, sell, rent, lease and otherwise acquire, hold and dispose of phonographs, phonograph-graphophones and instruments of any other kind or description designed for the recording and reproduction of sounds, and all supplies, appliances and materials that may be required to manufacture the same; and for the further purpose of renting and leasing such instruments to other persons and corporations, and to acquire patents, contracts, devices and instruments relating to the art or science of recording and reproducing sound; That the total amount of the capital

stock of the said company was six million six hundred thousand dollars, divided into sixty-six thousand shares of the par value of one hundred dollars each; that the said company would commence business with the sum of forty thousand dollars, divided into four hundred shares of the par value of one hundred dollars each, and that the subscribers to the said certificate were Jesse H. Lippincott, Thomas R. Lombard, George H. FitzWilson, George S. Evans and John Robinson, all of New York City, each of whom subscribed for eighty shares, of the capital stock of said company; That co-temporaneously with the execution, recording and filing of the said certificate, as your orators are informed and believe, and therefore charge the truth to be, the said incorporators proceeded to organize under the said certificate, and that thereby the said The North American Phonograph Company became a corporation under the laws of this State; that on or about the eighth day of May, eighteen hundred and eighty-nine, the said corporation filed in the Office of the Clerk of Hudson County a certificate of the payment of its capital stock, whereby it certified under the hands and oaths of a majority of the directors of the said company, that the sum of six million six hundred thousand dollars, the amount fixed as the total capital stock of the said company, had been fully paid in as follows: Forty thousand dollars thereof in cash and six million five hundred and sixty thousand dollars thereof by the purchase of property necessary and proper for the business of the corporation, the last installment thereof having been paid within thirty days prior to the first day of August, eighteen hundred and eighty-eight.

SECOND. That in the month of March, eighteen hundred and ninety-three, the said corporation filed its certificate in the Office of the Secretary of State, certifying that at that time the officers of the said company were as follows: President, Thomas A. Edison, Vice-President, Alfred O. Tate, Secretary, Cleveland Walcott, Treasurer, Thomas Butler; and that the directors of the said company were said Thomas A. Edison, Alfred O. Tate, Thomas Butler, Thomas R. Lombard, J. Adriance Bush, Scott Tremaine, and M. A. Nolan, all of whom, except said Edison and Tate are non-residents of this State; and that no election for officers or directors has since been held, or other report thereof filed; that your orators show that the said Thomas A. Edison and Alfred O. Tate have respectively resigned their offices of President and Vice-President of the said company, and that so far as your orators know no other persons have been elected to fill the vacancies caused by their resignation.

THIRD. That at the time of the organization of the said corporation there was in existence a corporation of the State of New Jersey known as the Edison Phonograph Company, which was organized for the purpose of putting into practical application the inventions and letters patent which had been theretofore granted to the said Thomas A. Edison for the instrument generally known as the phonograph, an instrument capable of recording and reproducing sounds, which corporation was organized with a capital of one million two hundred thousand dollars, and the whole of which, as your orators are informed and believe, was issued to the said Thomas A.

Edison in consideration of the grant by him to said company, of the sole and exclusive right to use the said patents, and that at the time of the organization of The North American Phonograph Company the said Thomas A. Edison held the entire amount of the capital stock of the Edison Phonograph Company, excepting one hundred and fifty shares which were held by one or more other individual holders; that on the twenty-eighth day of June, eighteen hundred and eighty-eight, an agreement was entered into between the said Thomas A. Edison and the said Jesse H. Lippincott, who was then contemplating the organization of The North American Phonograph Company and was its principal promoter, in and by which the said Thomas A. Edison agreed that he would sell and deliver to the said Jesse H. Lippincott the entire capital stock of the Edison Phonograph Company, excepting the said one hundred and fifty shares, for the sum of five hundred thousand dollars to be paid in installments between that date and the first day of November then next, and that subsequently, in pursuance of said agreement the said Edison did transfer the said shares to the said Lippincott.

FOURTH. That at the time of the organization of The North American Phonograph Company there was also in existence a corporation organized, as your orators are informed, in the District of Columbia, known by the name of the American Graphophone Company, which company also were the owner of patents and inventions for other instruments for recording and reproducing sounds, and that just prior to the organization of The North American Phonograph Company, the American

Graphophone Company granted to the said Jesse H. Lippincott the sole and exclusive right to use, let or sell to others to use in the United States, the letters patent and inventions covered thereby which were owned by the American Graphophone Company, and which were used in the construction of the instrument known as the Phonograph-Graphophone.

FIFTH. That at the time of the organization of The North American Phonograph Company, as your orators are informed and believe, the persons who had subscribed to its capital stock paid in the amount of their subscriptions in cash, so that the said company then had the sum of forty thousand dollars in cash with which to commence its business, and that immediately thereafter and as part of the same transaction, and as part of the original scheme or design which the said Jesse H. Lippincott had conceived, he, the said Jesse H. Lippincott, granted and conveyed to the said The North American Phonograph Company all the rights which he had obtained from the American Graphophone Company, and also transferred to The North American Phonograph Company the capital stock of the Edison Phonograph Company which he had purchased from the said Thomas A. Edison as hereinbefore set out, and that The North American Phonograph Company thereupon issued to the said Jesse H. Lippincott its capital stock aggregating the sum of six million five hundred and sixty thousand dollars as the consideration thereof, and that in this way the capital stock of The North American Phonograph Company became and was wholly issued.

SIXTH. That immediately after the organization of The North American Phonograph Company and on the first day of

August, eighteen hundred and eighty-eight, the said company began the business for which it was organized, and that on the day last named it entered into a contract in writing with the Edison Phonograph Works, another corporation organized under the laws of the State of New Jersey, whereby it agreed to grant and did grant to the Edison Phonograph Works the sole and exclusive right to manufacture the phonograph and the various devices and apparatus used and to be used in connection therewith and the supplies therefor in perpetuity, and agreed that it would not authorize the manufacture thereof by others. And your orators show that since the date of its organization all the phonographs and phonograph-graphophones and appliances appertaining thereto, used by the said The North American Phonograph Company in its business, have been made by the Edison Phonograph Works and that The North American Phonograph Company has never manufactured any of the said instruments and it has never owned or controlled any factory or works in which the same could be manufactured.

SEVENTH. That the business which was done by The North American Phonograph Company during the early period of its existence, was the sale and leasing to individuals and corporations of phonographs and phonograph-graphophones, and that for some little time after its organization and after it began the said business, its prospects of success as a financial venture appeared to be very good, but your orators show that in the course of time it was demonstrated that the said instruments as manufactured and sold by the said company had little or no practical or commercial value and that they were

used generally to reproduce instrumental and vocal music and other vocal and articulate sounds, and were set up in public places where they would be likely to be seen and used by the public generally for purposes of amusement and the exhibition of the capacity of a machine to receive and reproduce accurately the sound of the human voice and other sounds, and that in this way for some time the said company derived some little revenue, the amount of which is unknown to your orators, which was applied to the payment of the current expenses and indebtedness of the said company; but that as soon as the novelty of the instrument wore off, and the public became familiar with its capacity, it ceased to interest those who had seen and heard it, and that in consequence thereof the company's revenues were correspondingly diminished.

EIGHTH. That the business of the company not having proved so successful as had been anticipated, in the early part of the year eighteen hundred and ninety-two the said company found itself in financial difficulties and unable to pay all the obligations which it had assumed; that thereupon the said The North American Phonograph Company by action of its Board of Directors, authorized the issue of its bonds, aggregating the sum of three hundred thousand dollars, being three hundred bonds of the denomination of one thousand dollars each, and that on the first day of May, eighteen hundred and ninety-two, the said company in pursuance of such authority, issued the said bonds aggregating three hundred thousand dollars under the hand of its President and Secretary and its common seal; which bonds bear date the said first day of May,

eighteen hundred and ninety-two, and draw interest at the rate of six percent per annum, payable semi annually on the first days of May and November in each year, and that by the terms of the said bonds the principal thereof will mature on the first day of May, nineteen hundred and twelve; that it is provided in said bonds and each of them that in case the said company shall make default in the payment of the interest accruing upon any of the said bonds for thirty days after such interest shall have become due and payable and has been duly demanded, then, and in such case, it should be lawful for the holders of a majority of all the said bonds outstanding, by written notice to the company signed by them, to declare the principal of all the said bonds to be thereafter immediately payable, and that upon such default and the giving of such notice the principal and all arrears of interest on the said bonds should be forthwith due and payable. That among others your orator Walter Cutting, as executor aforesaid, is the holder of fourteen of the said bonds, aggregating fourteen thousand dollars; that your orator James Gaunt is the holder of eleven of the said bonds, aggregating eleven thousand dollars; that the said Thomas A. Edison owns two hundred and twenty of the said bonds, aggregating two hundred and twenty thousand dollars, and that Charles E. Carman owns fifteen of the said bonds, aggregating the sum of fifteen thousand dollars. That on the first day of May, eighteen hundred and ninety-four, six months interest on all the said bonds became due and payable to all and singular the holders thereof; that the same was not paid at maturity, and has not since been paid and that the several persons above named who hold the bonds of the

said company have received no portion of the interest on said several bonds which accrued at the last named date; that on the eighteenth day of June, eighteen hundred and ninety-four, the said Thomas A. Edison made a written demand upon the said The North American Phonograph Company for the sum of sixty-six hundred dollars, being the interest on the bonds of the said company held by him, to which demand the Treasurer of the said company on the same day replied in writing, that it was impossible to comply with the demand of the said Thomas A. Edison, but giving no reason therefor; that on the eighth day of August, eighteen hundred and ninety-four, your orators joined with the said Thomas A. Edison and Charles B. Carman in a notice and declaration which was on that day served upon the said company, wherein and whereby, by virtue of the provision made in that behalf in the said bonds, your orators and the said Edison and Carman, they being the holders of a large majority of said bonds, declared the default aforesaid that the principal and all arrears of interest of the said bonds, aggregating three hundred thousand dollars, should be and become immediately due and payable to the several holders thereof; And your orators show that by the action of the said company in making default in the payment of the said interest and of your orators and the said Edison and Carman in declaring the principal of the said bonds due and payable, the principal and accrued interest on each and all of the said bonds did become due and payable immediately and that the same are now due and payable to the several holders thereof.

NINTH. That the said The North American Phonograph Com-

pany in the course of its business became indebted to the said Thomas A. Edison in the sum of seventy-eight thousand five hundred and eighteen dollars and thirty-seven cents in addition to the amount owing to him on his bonds as hereinabove stated, and that on the first day of April, eighteen hundred and ninetyfour the said company gave its promissory note to the said Thomas A. Edison for that amount, which note was dated on the said first day of April, eighteen hundred and ninety-four, and was payable ten days after demand, and was made payable at number forty-four Broad Street in the City of New York, with interest at the rate of six percent per annum; that in the meantime the said The North American Phonograph Company had become the owner of the total capital stock of the Edison Phonograph Company, aggregating twelve thousand shares, and that the said company pledged the said twelve thousand shares of stock of the Edison Phonograph Company to the said Thomas A. Edison as collateral security for the payment of the said note; that said Thomas A. Edison has many times demanded the payment of the said moneys but that the same has never been paid, and that on the thirteenth day of August, eighteen hundred and ninety-four, after due notice to the said company and public advertisement, the said stock was sold by the said Thomas A. Edison at the Court House in Jersey City for the sum of ten thousand dollars, and that the remainder of the moneys secured by the said note and stock have never been paid.

TENTH. That the said The North American Phonograph Company is indebted to the Edison Phonograph Works in the sum of

about thirty-six thousand dollars on open account and promissory notes for the price and value of phonographs and phonograph-graphophones manufactured by the last named company for the said The North American Phonograph Company, all of which is due and payable, and that so far as your orators have been able to ascertain the said The North American Phonograph Company is indebted to other people who are unknown to your orators on promissory notes and open accounts in the ~~sum~~ of twenty thousand dollars.

ELEVENTH. That outside of the patents and rights originally belonging to The American Graphophone Company and acquired in the manner above stated by The North American Phonograph Company, the assets of said company consist almost wholly of phonographs and phonograph-graphophones which were originally made to be rented and leased to individuals and corporations; that your orators have inquired of former officers and directors of the said company as to the value thereof and they show that they are informed and verily believe, and they charge the truth to be, that the total value of the same does not exceed the sum of twenty-five thousand dollars; and your orators further show that the value of the rights and licenses which the said company acquired from The American Graphophone Company is problematical, and, in the opinion of your orators, cannot be stated by any one at the present time; that the same depends upon so many contingencies, and the practical application thereof is subject to so many conditions, and the making of a commercial success of the instruments manufactured thereunder depends so much upon business

methods, the necessity of a large money capital, and upon improvements to adapt the said instruments to the needs and requirements of the public, that, in the opinion of your orators, the said patents and rights are at the present time of little or no value, and certainly in the hands of the present company are of no value what ever.

TWELFTH. That at the time of the organization of the said The North American Phonograph Company it was the design of the incorporators and of the directors, officers and stockholders thereof, that the principal portion of its business should be the manufacture of phonographs to be leased to individuals and corporations for use and to this end the said company had constructed by the said Phonograph Works a very large number of phonographs which were delivered to the said company and which the said company endeavored to lease, and that the said company for a time succeeded in leasing a large number thereof; but your orators show that the demand of the public for the said instrument is quite limited and that it was much more than supplied by the large number of phonographs which the said company had had constructed; that for the past three years or more the said company has had no new phonographs built but that in order to supply the small demand for the instrument the said company is merely repairing and working over its old stock and instead of leasing the same, is selling them for whatever price they are able to get. And your orators show that notwithstanding the forced economy of expenditures and the fact that it is unnecessary for them to have new machines constructed, the sales of the

said company of the old machines which are being repaired and worked over are not sufficient to pay the necessary running expenses of the said business; that the said company is, and for many months has been running at a loss, and that in case it is allowed to continue to do so there will be in a short time be nothing left for its creditors; that it has an expensive office in the City of New York and has been paying something over thirteen thousand dollars a year in salaries (but what amount the said company is paying in salaries now your orators do not know and cannot state); and is otherwise expensively conducted; and that as your orators are informed and believe and charge the truth to be, the company is daily running deeper into debt and is at the same time consuming its property in a vain endeavor to keep afloat.

THIRTEENTH. And your orators further show and charge the fact to be that the said company is insolvent; that it has not the funds to carry on the ordinary business of said organization; that it has been carrying on said business at great pecuniary loss to the stockholders of said company; that owing to the great depression in business and the general uncertainty as to the future, the business of said corporation cannot be conducted so as to enable the said corporation to pay its just debts or carry on its operations with profit to its stockholders, and that the further prosecution by the said company of its said business would necessarily tend to the sacrifice, injury and depreciation of the rights of its stockholders and creditors.

IN CONSIDERATION WHEREOF, and inasmuch as your orators are without adequate remedy without the assistance of

this court.

To the end therefore that the said company may full, true, direct and perfect answer make to all and singular the matters and things hereinbefore stated; that it may set forth and discover the goods and chattels, rights and credits, moneys and effects and property of every kind and description belonging to the said corporation, that your orators and the other creditors and stockholders of the said company may be paid what is justly due them; that the said company may be enjoined from exercising any of its franchises and from receiving any debts due to it, and from paying and transferring any of its moneys or effects, and from continuing its said business, and that it may be decreed to be insolvent, and that a Receiver may be appointed, according to the form of the statute in such case made and provided; and that your orators may have such other and further relief as the nature of their case requires and as may be agreeable to equity.

May it please your Honor, the premises considered, to grant unto your orators the State's Writ of Injunction issuing out of and under the seal of this Honorable Court, directed to the said The North American Phonograph Company, its officers, servants and agents, enjoining and restraining them and each of them from exercising any of the privileges or franchises granted by the act incorporating said company, and from collecting or receiving any debts due to said corporation, and from paying out, selling, assigning or transferring any of the estate, money, funds, lands, tenements or effects of said corporation; and also the State's Writ of Subpoena

to be directed to the said company, commanding it to appear
in this Court to answer the premises and to abide by and per-
form such decree as shall be made herein.

Guild & Kim
Solicitor of Criminal
with Complaints

IN CHANCERY OF NEW JERSEY.

Between
Walter Cutting, Executor, &c.,
and James Gaunt,
Compts.,
-and-

The North American Phonograph
Company,
Def:

-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-

Bill for Dissolution.

-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-

Stokes, whose name is subscribed to the above certificate, was, at the date thereof, and now is, the Clerk of the Court of Chancery of the State of New Jersey; that said attestation is in due form, that the seal thereto annexed is the seal of said Court, and that the signature of the said Edward C. Stokes is in his own proper handwriting.

Witness my hand at the City of Trenton this twenty-fourth day of August, A. D., nineteen hundred and three.

W. J. MAGIE.

Note—This certificate is made pursuant to an act of Congress (Rev. Stat. U. S. 1875, Sec. 905, p. 170).

Complainant's Exhibit 129.

Essex County, ss.:

Thomas A. Edison, being duly sworn, according to law on his oath, says; I am the inventor of the instrument known as the phonograph, and am one of the persons named in the annexed bill of complaint; I know of my own knowledge of the transaction attending the organization of the corporations known as the Edison Phonograph Company, the Edison Phonograph Works and The North American Phonograph Company, all of which are mentioned in the said bill; I have in my possession a certified copy of the certificate of organization of The North American Phonograph Company; this company, as it appears by the said certificate, was organized on July fourteenth, eighteen hundred and eighty-eight, by certificate dated on that day and filed in the office of the Secretary of State two days afterwards; the objects for which the said company was formed are correctly set out in said bill; the total capital stock of the said company authorized by the said certificate was Six million six hundred thousand dollars, divided into sixty-

#1

1123

Edison ASS, daint

1345

Part of Bill of
Complaint: 8/16/94

1346

1347

From N. T. Phon Co to National Phon

- 1348 six thousand shares of the par value of One hundred dollars each, and the names of the parties who signed the certificate are correctly given in said bill; shortly after the filing of the said certificate the said company was organized by the incorporators and almost contemporaneously with its organization I became a stockholder in the said company; I was elected one of its directors; I have held the office of director in that company from that time until the present, and I am now one of its directors; I was elected president of the company in the month of , eighteen hundred and , and I held the office of president until the month of January, eighteen hundred and ninety-four when I sent to the company my written resignation of the office; the resignation was never accepted, and I have never since that time attended any of the meetings of the Board of Directors.
- 1349

In the month of March, eighteen hundred and ninety-three the said company filed a list of its officers and directors in the office of the Secretary of State, as set out in the second paragraph of the said bill; since that time I have signed no such certificate and think that none has been signed.

- 1350 Prior to the organization of The North American Phonograph Company I had caused to be organized the Edison Phonograph Company, and I granted to that company the sole and exclusive right to use my invention of the phonograph in consideration of the issue of the total capital stock of the company to me; the total capital stock of the company was One million two hundred thousand dollars, and at the time of the organization of The North American Phonograph Company I held the whole of this stock excepting one hundred and fifty shares; on June twenty-eighth, eighteen hundred and eighty-eight, I made an agreement with Jesse H. Lippencott, who was then contemplating the or-

ganization of The North American Phonograph Company and was its principal promoter, by which I agreed that I would sell and deliver to the said Lippencott the entire capital stock of the Edison Phonograph Company except the said one hundred and fifty shares, for the sum of Five hundred thousand dollars; I subsequently transferred my stock in that company either to Lippencott or to The North American Phonograph Company in execution of my said contract. 1351

Prior to the organization of The North American Phonograph Company there was in existence a corporation known as the American Graphophone Company, having its headquarters in the City of Washington, in the District of Columbia; that company granted to the said Jesse H. Lippencott the sole and exclusive right to use the patents owned by it. 1352

In the organization of The North American Phonograph Company the parties who subscribed to its capital stock, the sum of Forty thousand dollars, paid in their several subscriptions in cash; the remainder of the stock, Six million five hundred and sixty thousand dollars, was issued to the said Jesse H. Lippencott in consideration of the transfer by him to that company of the stock of the Edison Phonograph Company which I had sold him and the rights which he had acquired from the American Graphophone Company; I have in my possession the contract made between The North American Phonograph Company and the Edison Phonographic Works mentioned in the sixth paragraph of the said bill of complaint; said contract provided, among other things that The North American Phonograph Company granted to the Edison Works the sole and exclusive right to manufacture the phonograph and the various devices and apparatus used and to be used in connection therewith and 1353

1354 the supplies therefore in perpetuity, and agreed that it would not authorize the manufacture thereof by any other person or corporation; all the phonographs and appliances appertaining thereto which have been used by The North American Phonograph Company in its business since the date of its organization have been made by the Edison Phonograph Works; the said The North American Phonograph Company has never manufactured any of the said instruments and never owned or controlled any factory or works in which the same could be manufactured.

1355 The business which was done by The North American Phonograph Company during the early period of its existence was the sale and leasing to individuals and corporations of phonographs and phonograph graphophones, and that for some little time after its organization it did a good business and its prospects for future success were very good, but in a short time it was demonstrated that the instruments as manufactured and sold by the said company had little or no practical or commercial value; they were generally used as curiosities to reproduce instrumental and vocal music and other vocal and articulate sounds, and were set up in public places for purposes of amusement and exhibition; from this use of the said instrument the company at first derived some revenue, but as soon as the novelty of the instrument wore off and the public became familiar with its capacity the income of the company diminished so that in the early part of the year eighteen hundred and ninety-two the company found itself in financial difficulties and unable to meet all the obligations which it had assumed; it thereupon authorized the issue of the bonds mentioned and set out in the eighth paragraph of said bill; the total issue of these bonds was Three hundred thousand dollars, three hun-

dred bonds of the denomination of One thousand 1357
dollars each; they were dated May first, eighteen
hundred and ninety-two and payable in ten years
with interest at six per cent. payable semi-annually
on May first and November first of each year; it
was provided in those bonds and in each of them
that in case the said company should make default
in the payment of the interest accruing upon any
of the said bonds for thirty days after such interest
should have become due and payable and had been
duly demanded, then and in such case it should be
lawful for the holders of a majority of all the said
bonds outstanding, by written notice to the com-
pany, signed by them, to declare the principal of all 1358
the said bonds to be thereafter immediately pay-
able, and that upon such default and the giving of
such notice the principal and all arrears of interest
on said bonds should be forthwith due and payable.
I am the holder of two hundred and twenty of these
bonds, aggregating the sum of Two hundred and
twenty thousand dollars; the interest which ac-
crued on these bonds on the first day of May, eigh-
teen hundred and ninety-four, was not paid at ma-
turity, and on the eighteenth day of June, eighteen
hundred and ninety-four, I wrote a letter to the
said company of which the following is a copy, "I
hereby demand payment of the sum of \$6,600, in- 1359
terest on the bonds of your company which became
due and payable on the first day of May last past.
The bearer, W. E. Gilmore, is hereby authorized to
receive payment of the said interest for me," this
letter was signed by me and sent by Mr. Gilmore to
the said company. On the same day I received a
reply thereto of which the following is a copy:
"Jersey City, N. J., June 18, 1894; Thomas A. Edi-
son, Esq., Orange, N. J. Dear Sir: We are in re-
ceipt of your favor bearing date 18 inst., and in re-
ply thereto beg to say that it is impossible to com-

1360 ply with your demand for the payment of the sum of \$6,600 interest on the bonds of this company standing in your name this date, and registered on the books of the company as such at this date, and said interest being due on May 1, 1894, and still unpaid. Yours truly, The North American Phonograph Co. Scot Tremain, Treasurer." Since that time no portion of the said interest has been paid to me. On the sixth day of August, eighteen hundred and ninety-four I joined with Charles B. Carman and the complainants in this suit in a declaration that the principal of the said bonds was immediately due and payable, a copy of said declaration is hereto annexed and made part hereof; the

1361 persons who signed the said declaration own in the aggregate Two hundred and sixty thousand dollars out of the total issue of three hundred thousand dollars of the said bonds.

The North American Phonograph Company in the course of its business became indebted to me in the sum of seventy-eight thousand five hundred and eighteen dollars and thirty-seven cents, in addition to the amount owing to me on my bonds, and on April first, eighteen hundred and ninety-four, the said company gave me its promissory note for that amount, payable ten days after demand, at No. 44

1362 Broad street in the City of New York, with interest at six per cent. The said company had become possessed of the total capital stock of the Edison Phonograph Company, aggregating twelve thousand shares, and it pledged the whole thereof to me as collateral security for the payment of the said note; I have many times demanded the payment of the money due on that note, but the same has never been paid to me; and on the thirteenth day of August, eighteen hundred and ninety-four, after due notice to the said company, and public advertisement, the said stock was sold by me at the Court

House in the city of Jersey City, in the County of Hudson, for the sum of Ten thousand dollars; the remainder of the moneys secured by the said note and stock have never been paid. 1363

I am the president of the Edison Phonograph Works. The North American Phonograph Company is indebted to the Edison Phonograph Works in the sum of about thirty-six thousand dollars on open book account as set out in the tenth paragraph of the said bill; the Edison Phonograph Works have made all reasonable efforts to collect the said moneys, have many times made demands upon the North American Phonograph Company therefor, but have not been able to secure payment thereof, and that the same is now owing to the said Edison Phonograph Works. 1364

I am familiar with the property owned by The North American Phonograph Company; it consists entirely, outside of its rights in the inventions of phonographs and phonograph-graphophones; their value at the present time to any one going into the business of selling and leasing phonographs would not exceed twenty-five thousand dollars; it is mostly old stock made three years or more ago, some of the instruments have been used and need repairs before they can be put upon the market, and in fact there are very few of the instruments which can be placed on the market at the present time without more or less work being first done upon them. 1365

The value of the rights and licenses which the North American Phonograph Company acquired as is set forth in the said bill from the American Graphophone Company which company has repudiated the same is problematical. I don't think that their value can be estimated at the present time; their value depends upon many contingencies, the practical application thereof is subject to many conditions, and the making of a

1366 commercial success of the sale or leasing of the instrument depends upon correct business methods the necessity of a large money capital and upon improvements to adapt the instrument to the needs and requirements of the public, and in my opinion these rights in the hands of the present company are of no value whatever at the present time and cannot be made available as a valuable asset for the payment of the company's debts.

I am familiar with the whole history of The North American Phonograph Company. It was the original design of the company and its officers and directors that the principal portion of its business should consist of manufacturing and owning and leasing phonographs and phonograph graphophones to individuals and corporations, and to this end the said company procured the said Edison Phonograph Works to manufacture a large number of phonographs; these were delivered to The North American Phonograph Company and that company succeeded in leasing a number of them and obtaining some revenue therefrom, but the demand of the public for such an instrument is very limited, and it was more than supplied by the large number of phonographs which the said company had had constructed; for the past three years or more the said company has had no new phonographs built, and it has now practically ceased leasing the instruments, the principal business which the company is now engaged in is the repairing and re-constructing of the old phonographs and the selling of them to individuals and corporations at such prices as they are able to get; the sales of the company of these old machines are not sufficient to pay the necessary running expenses of the business and the company is and for many months has been running at a loss; in case this business is allowed to continue there will in a short time be nothing left for its creditors;

it is now using up its capital; it has an expensive office in the city of New York and has been paying large amounts in salaries, and is expensively conducted; the company is daily running deeper into debt. 1369

The said company is insolvent; it has not sufficient funds to carry on its ordinary business, and in the condition of the finances of the country, considering the fact that the phonograph as now used and exploited is not a necessity, it is very uncertain whether the business can be made to pay its expenses for some time to come; its further prosecution by the said company would necessarily tend to the sacrifice of the rights of its creditors. 1370

Thomas A. Edison.

Sworn and subscribed to before me this }
fifteenth day of August, 1894. }

Wm. D. Gibby,
Master in Chy of N. J.

I, Edward C. Stokes, Clerk of the Court of Chancery of the State of New Jersey, the same being a Court of Record, do hereby certify that the foregoing is a true copy of affidavit of Thomas A. Edison attached to and a part of bill of complaint, filed Aug. 16, 1894, in the cause wherein Walter Cutting, Exr., & al., are complainants and The North American Phonograph Co., is defendant, now on the files of my office. 1371

In testimony whereof, I have hereto set my hand and affixed the seal of said Court,
[SEAL.] at Trenton, this fifteenth day of December, A. D., nineteen hundred and three.
EDWARD C. STOKES,
Clerk.

I, William J. Magie, Chancellor of the State of New Jersey, do hereby certify that Edward C. Stokes, whose name is subscribed to the above cer-

1372 tificate, was, at the date thereof, and now is, the Clerk of the Court of Chancery of the State of New Jersey; that said attestation is in due form, that the seal thereto annexed is the seal of said Court, and that the signature of the said Edward C. Stokes is in his own proper handwriting.

Witness my hand at the City of Trenton this fifteenth day of December, A. D., nineteen hundred and three.

W. J. MAGIE.

Note—This certificate is made pursuant to an act of Congress (Rev. Stat. U. S. 1875, Sec. 905, p. 170).

1373

[2474]

1374

STATE OF NEW YORK

CITY & COUNTY OF NEW YORK: SS

Walter Cutting, being
duly sworn according to law on his oath says, I am one of the
complainants in the foregoing bill of complaint against The
North American Phonograph Company, I reside at Pittsfield in
the state of Massachusetts and am the executor of the last will
of Robert L. Cutting deceased; Robert L. Cutting died on the

25th day of *February* eighteen

hundred and *eighty seven* leaving a last will, which

was probated in the county of *New York* in the state

of *New York* on or about the *eight*

day of *March* eighteen hundred and *eighty seven*

The estate of ~~M. testator, the said Robert L. Cutting at the time~~
holds an ~~of his death held and owned in his own right~~

~~fourteen~~ bonds of

the denomination of one thousand dollars each, out of an

issue of three hundred bonds of the denomination of one

thousand dollars each issued by the said The North American

Phonograph Company as is set out in the said bill; the interest

has been paid on said bonds up to the first day of November,

eighteen hundred and ninety three; six months interest thereon

accrued on the first day of May, eighteen hundred and ~~ninety~~

four, and the same has never been paid to me as such executor;

On the eighth day of August, eighteen hundred and ninety four,

I united with Charles B. Carman, Thomas A. Edison and James

Gaunt in signing a declaration that the principal of the said

three hundred bonds, including those which I hold as such

executor should become immediately due and payable, as is set out in the said bill, and since that time neither the principal or arrears of interest of the said bonds have been paid to me, and the whole amount is now due and owing.

Sworn and subscribed to

before me this *twelfth*

day of August, 1894.

Walter Cutting



*Lee H. H. H. H.
Commissioner of the State of
New Jersey in the State of New Jersey*

STATE OF NEW YORK

CITY AND COUNTY OF NEW YORK: SS.

James Garnt, being duly sworn according to law on his oath says, I am one of the complainants in the foregoing bill of complaint against the North American Phonograph Company, and am the holder in my own right of eleven bonds of the denomination of one thousand dollars each, parcel of an issue of three hundred bonds of the denomination of one thousand dollars each, issued by the said The North American Phonograph Company; on the first day of May, eighteen hundred and ninety four six months interest on these bonds became due and was not paid and has not since been paid; on the eighth day of August, eighteen hundred and ninety four, I united with Charles B. Carman, Thomas A. Edison and Walter Cutting, executor, in signing a declaration that the said bonds should be immediately due and payable, as set out in the said bill; since that time neither the principal or arrears of interest of the said bonds have been paid to me, and the whole thereof is now due and payable.

Sworn and subscribed to

before me this *ninth*

day of August, 1894.

James Garnt

Geo. H. Macy

*Commissioner of Deeds for the
State of New York in the
State of New York*

State of New Jersey

COUNTY OF *Middlesex*

ss. Charles B. Carman,

being duly sworn on his oath says, that on the eighth day of August, eighteen hundred and ninety four, he served upon Scot Tremain, the Treasurer of The North American Phonograph Company, at the office of the said company in the city of New York, a notice of which the following is a copy: "New York August 6th, 1894. The North American Phonograph Company, 32 Park Row, New York, Dear Sirs: Take notice that the undersigned, being a majority of the holders of the bonds issued by you aggregating \$300,000., date May 1, 1892, hereby declare that the principal of all the said bonds shall be and is immediately due and payable with all arrears of interest thereon. This notice and declaration is made in pursuance of the provision made in that behalf in the said bonds for default in the payment of the interest which accrued thereon on May 1, 1894. Chas. B. Carman, 10 Bonds \$15,000, Jas. Garnt, 11 Bonds, \$11,000., Walter Cutting, Exr. estate of R. L. Cutting 14 Bonds, \$14,000; Thomas A. Edison, 220 Bonds, \$220,000"; this notice and declaration was signed in my presence by the parties whose names purport to be affixed thereto.

born and subscribed to
before me this *eleventh*

day of *August* 1894.

at Middlesex County
Louis Sherrard

Charles B. Carman

3 2
STATE FEE 50

IN CHANCERY OF NEW JERSEY.

Between
Walter Cutting, Ex'r & al
Compls.,

-and-
The North American Phonograph
Company,
Deft.

-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-

Order to show cause why a Re-
ceiver should not be appointed.

4/
-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-

Guild & Lum,
Sol'rs.

FILED AUG 22 1894

Richard D. Wolfson

CLK.

Between
Walter Cutting, Ex'r & al)
Complainants,)
-and-) Bill for Injunction,
The North American Phonograph)
Company,) Order, &c.
Defendant.)

This matter being opened to the Court by counsel for the Complainants, and the Court being satisfied of the sufficiency of the application made in this cause and of the truth of the facts and allegations contained in the bill exhibited herein: It is on this *sixteenth* day of August, eighteen hundred and ninety-four, ordered that the defendant, The North American Phonograph Company do appear before this Court at the Chancery Chambers in *Newark* on *Tuesday* the *twenty first* day of August, eighteen hundred and ninety-four, at ten o'clock in the forenoon, then and there to show cause, if any it has, why an injunction should not issue pursuant to the prayer of the said bill, and a receiver be appointed to take charge of all the property and estate of the said corporation, pursuant to the statute in such case made and provided.

And it is also ordered that a true but uncertified copy of this order, together with a copy of the said bill and the affidavits thereto annexed be served upon the said corporation *on the day of the date of this order* ~~on the day of the date of this order~~, by delivering the same to Scott Tremain, one of the Directors of the said corporation, and *that* ~~that~~ *be mailed this day* a true but uncertified copy of this order with the postage prepaid to Thomas Butler, Thomas R. Lombard, J. Adriance Bush,

and M. A. Nolan, Directors of said Corporation, at their
several post office addresses, if the same can be ascertain-
ed.

Respectfully advised,
Robert Lee
N.E.

Wm. H. Lee
P. 5

IN CHANCERY OF NEW JERSEY.

Between *
Walter Cutting, Ex'r & al
Complts.

-and-
The North American Phonograph
Company,

Deft.

-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-

Proof of Service of copy of
Order to show cause why a Re-
ceiver should not be appointed.

-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-x-

Guild & Lum,
Sol'rs.

FILED AUG 22 1894

Receivd by Court

CLK.

The North American Photograph
Company,
Defendant

Proof of Mailing

New Jersey :

ss.

Essex County :

Charles M. Lum, being duly sworn, on his oath saith : That he is one of the Solicitors of the complainant in the above entitled cause ; that he has in good faith made diligent and careful inquiry for the post office addresses of Thomas Butler ; Thomas R. Lombard, J. Adviance Bush and M. W. Nolan ; in the manner required by the rules of this court, and that he is credibly informed in such manner that he believes it to be true, that the respective post office addresses of said persons are as follows - Thomas Butler, No. 44 Broad St, New York City ; Thomas R. Lombard, Chicago, Illinois, J. Adviance Bush, No. 15 West 36th St, New York City ; M.W. Nolan, No. 99 Division Ave., Brooklyn, New York ; and this deponent further saith that he did on the sixteenth day of August, Eighteen hundred and ninety four, place in the general post office of the City of Newark, County and State aforesaid, four certain letters, addressed respectively as follows ; "Thomas Butler Esq., No. 44 Broad St, New York City" ; "Thomas R. Lombard Esq, Chicago, Illinois" ; "J. Adviance Bush Esq., No. 15 West 36th St, New York City ;" ; "Mr. M. W. Nolan, No. 99 Division Ave, Brooklyn, N. York" ; with the postage thereon prepaid, each of which said letters contained a true but uncertified copy of the order to show cause hereto-

annexed.

Seen and subscribed before me at :
Newark, N.J. this twenty first day :
of August A.D. 1894 :

Chas. M. Lee

Am. L. G. S. S.

Master, N. City of N. J.

In Chancery of New Jersey

Between

Walter Gutting, Exr & al
Complainants

-and-

The North American Photograph
Company,

Defendant

: On Bill for Injunction

: Proof of Service

New Jersey :

ss.

William D. Gibby, of full age,

Essex County :

being duly sworn, on his oath saith

that he did on the sixteenth day of

August, eighteen hundred and ninety four serve true but

uncertified copy of the order hereto annexed, together with

a copy of the bill and affidavits thereto annexed filed in

the above entitled cause, on Scott Tremaine, by handing

the same to him personally, at Clifton, Staten Island,

in the State of New York.

Sworn and subscribed before

me at Newark, N.J. this twenty

first day of August A.D. 1894

Wm D Gibby

[Signature]
mccaffrey

IN CHANCERY OF NEW JERSEY.

Between
Walter Cutting et al, :
Complainants, :
and : On
The North American : Bill
Phonograph Company, : &c.
Defendant. :

OATH OF RECEIVER.

Guild & Lum,

6 So. 1st St.

FILED AUG 22 1894

Received for

CLK.

IN CHANCERY OF NEW JERSEY.

Between

Walter Cutting et al,

Complainants,

and

The North American Phonograph Company,

Defendant.

On Bill &c.

Oath of Receiver.

I, John R. Harbin, do swear that I will faithfully, honestly and impartially execute the powers and trusts reposed in me, as Receiver for the creditors and stockholders of the North American Phonograph Company, and that without favor or affection.

Taken, subscribed and sworn

Before me this 21st day

of August, 1897.

John R. Harbin

Fredrick Byington

Master in Chancery of New Jersey

6
IN CHANCERY OF NEW JERSEY.

Between

Walter Cutting, Execu-
tor, et al.,

Compt.,

and

North American Phonograph
Co., Deft.

ORDER GIVING DIRECTIONS TO
RECEIVER.

A. O. KEASBEY & SONS,

Solsr.,

PRUDENTIAL BUILDING,

NEWARK, N. J.

8-26-03

*Louis Hicks
transcript*

6 9/21/94

1116

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1324 I, William J. Magie, Chancellor of the State of New Jersey, do hereby certify that Edward C. Stokes, whose name is subscribed to the above certificate, was at the date thereof, and now is, the Clerk of the Court of Chancery of the State of New Jersey; that said attestation is in due form, that the seal thereto annexed is the seal of said Court, and that the signature of the said Edward C. Stokes is in his own proper handwriting.

Witness my hand at the City of Trenton, this twenty-fourth day of August, A D. nineteen hundred and three.

W. J. MAGIE.

1325 Note—this certificate is made pursuant to an act of Congress (Rev. Stat. U. S. 1875, Sec. 905, p. 170).

**Complainant's Exhibit 128, Oct. 31,
1903, J. A. S., Ex'r.**

IN CHANCERY OF NEW JERSEY

	Between	}
	WALTER CUTTING, Executor, <i>et</i>	
	<i>al.</i> , Complainants,	
1326	and	
	NORTH AMERICAN PHONOGRAPH COMPANY, Defendant.	

A petition having been filed in a suit pending in this Court, between the Edison United Phonograph Company, complainant, and the Edison Phonograph Works and the North American Phonograph Company, defendants, setting forth an

From N.Y. Phon Co. vs. National Phon Co

agreement between Thomas A. Edison, the North American Phonograph Company, and one Jesse H. Lippincott, by which it was agreed that the North American Phonograph Company should not sell phonographs for use in countries other than the United States and Canada, nor interfere in any way with the foreign business of said Edison; and also a subsequent agreement, made March eleventh, eighteen hundred and ninety, by which said Edison assigned all his interest in Letters Patent for phonographs to the Edison United Phonograph Company, and agreed that he would not sell phonographs for use in any other countries than the United States and Canada, nor interfere in any way with the foreign business relating to phonographs; and that by an agreement of the same date the Edison Phonograph Works, which had exclusive right to manufacture phonographs and supplies therefor, agreed with the Edison United Phonograph Company that it would not manufacture any phonograph machines, supplies or appliances, for sale or use in any part of the world except the United States and Canada, and would use its best endeavors, either by agreements or suitable marks, or otherwise, to prevent any such machines, supplies or appliances, which it should manufacture for sale or use in the United States and Canada, from being sold or used elsewhere; and praying that John R. Hardin, who was appointed receiver of the North American Phonograph Company, an insolvent corporation, by an order made in this suit, might be made a party defendant to the said suit by the Edison United Company, and might be required, by the direction of this Court, to sell phonograph machines and supplies only in such way as to show that they are not to be used in other countries except the United States and Canada, and make such agreements with purchasers as would

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1330 reasonably provide against the shipment of the same to foreign countries:

And an order of this Court having been made on the twenty-ninth day of August, amended on the thirty-first day of August, eighteen hundred and ninety-four, requiring the said receiver to show cause why he should not be made a party to that suit, and directing him in the meantime not to sell any phonographs or supplies therefor without distinctly marking the same so as to indicate that they are not to be sent to or used in any countries other than the United States and the Dominion of Canada, and also without requiring the purchaser

1331 to make a promise, in writing, not to sell or use such machines or supplies outside of the territory of the United States and Canada, and not to sell them to others to be by them sold for sale or use outside of the territory of the United States and Canada:

And upon the hearing of the said order to show cause, this Court having made an order directing that said receiver be made a party to the said suit by the Edison United Phonograph Company, but vacating the said restraining order and direction to the receiver, to the end that an order conforming to the said agreement made with Thomas A. Edison by the North American Phonograph Company might be made in this suit in which the receiver was appointed:

1332

It is, thereupon, on this twentieth day of September, eighteen hundred and ninety-four, ordered and directed that the said John R. Hardin, receiver, in making sales of any phonographs, or phonographic supplies or appliances, whether at public or private sale, shall, before the delivery of the goods, take from the purchaser a receipt, in writing, showing the number of the machine and the nature and quantity of the supplies and appliances, and also giving notice that such machines, supplies and

appliances are sold subject to the provisions and obligations of an agreement, in writing, made August first, eighteen hundred and eighty-eight, between Thomas A. Edison and the North American Phonograph Company and Jesse H. Lippincott, by the seventh paragraph of which it was provided as follows: "The North American Company shall not sell phonographs for use in countries other than the United States and Canadas, nor interfere in any way with the foreign business of the said Edison. The said Edison is also to have the exclusive right in perpetuity to manufacture phonographs and all supplies therefor for export."

ALEX. T. MCGILL, 1334
C.

Respectfully advised

A. V. Van Fleet,
V. C.

Endorsed: Filed Sep. 21, 1894.

IN CHANCERY OF NEW JERSEY.

Between
WALTER W. CUTTING, Exp., *et*
al.,
Complainants,
and
NORTH AMERICAN PHONOGRAPH
Co.,
Defendants,

On Bill, &c.

1335

The receiver heretofore appointed in the above entitled cause having, after notice to the creditors and stockholders of the defendant company, presented to the Chancellor his petition on the eighth

5 7 STATE FEE 50

In Chancery of N. J.

Between

Walter Cutting & als, Compts

--and--

The North American Phono-
graph Co. Deft.

Order appointing counsel for
receiver. 2

James E. Howell
Sols

FILED NOV 14 1894

Heard & W. B. Smith

CLK.

Surv. 4. 33, 344

In Chancery of New Jersey.

Between

Walter Cutting, & als, Compts.

and

The North American Phonograph Co.

Deft.

On application of John R. Hardin, the receiver appointed in this cause, it is on this *thirteenth* day of November, eighteen hundred and ninety four, ordered that James E. Howell be, and he hereby is appointed and assigned as counsel to the said receiver herein.

Respectfully approved
A. H. Van Dusen
A. H.

6 8 STATE FEE 50

In Chancery of N.

Between

Walter Cutting & als,

Compts.

--and--

The North American Phono-
graph Company, Deft.

4

Order limiting creditors,

Coult and Howell,

Solrs.

FILED NOV 22 1894

Richard Smith

CLK.

In Chancery of New Jersey.

Between

Walter Cutting & als, Compts.

--and--

The North American Phonograph

Company, Deft.

Upon opening this matter to the court by J. E. Howell, of counsel with the receiver in the above cause, it is on this *twentieth* day of November, eighteen hundred and ninety four ordered that the creditors of the said The North American Phonograph Company do present to the receiver appointed in this cause, and prove before him, under oath or affirmation, or otherwise, as the said receiver shall direct, to the satisfaction of the said receiver, their several claims and demands against the said corporation, within *three* months from the date of this order, or that they be excluded from the benefit of such dividends as may thereafter be made and declared by this court upon the proceeds of the effects of said corporation; and for the better ascertaining the creditors of said corporation, and what is due to them, respectively, the said creditors are to be examined as the said receiver shall direct or may deem necessary and expedient, and produce books and papers before him, on oath or affirmation which oath or affirmation the said receiver is hereby authorized to administer, as well as to examine, under oath or affirmation, all such witnesses as shall be produced before him touch

the demands of said creditors.

~~And it is further ordered that the said receiver do cause proper advertisements to be published in at least two newspapers published in this state, and such newspapers published in the cities of New York~~

~~as he shall deem proper and advisable, for the creditors of said corporation to come in before him and prove their claims and demands, as in this order is directed; and that such publication be made within _____ days from the date hereof, and be continued in such papers as aforesaid for the space of _____ months.~~

within twenty days from this date
 and it is further ordered that said receiver *himself or written on a postal card* ~~also~~ mail a notice of this order to the post office address of each of the said creditors, ~~the same can be ascertained~~ *whose post office address he can ascertain.*

*Respectfully advised
 A. H. Baker
 Secy
 F. C.*

789
In Chancery of N. J.

Between

Walter Cutting & als,

Compts.

--and--

The North American Phono-
graph Co. Debt.

10
16

26

Petition of John R. Hardin,
receiver,

Coult and Howell,

Solrs.

Filed December 4,
1894.

Allen W. Smith

Between

Walter Cutting & als, Compts.

--and--

The North American Phonograph

Company, Deft.

To the Honorable Alexander T. Mc Gill, Chancellor of the State of New Jersey.

The petition of John R. Hardin, the receiver in this cause, respectfully shows unto your Honor, that he is informed, and believes it to be true, that at the time of his appointment as receiver of the North American Phonograph Company, there were in the regular employ of the company at its office in the City of New York, ten clerks who were receiving a regular salary of from six dollars and twenty five dollars per week respectively, and that there was also at the same time in the regular employ of the company an expressman named J. L. Douglas, at the rate of twenty dollars per week, That after the appointment of your petitioner as such receiver, the said employees were continued by him in the employ of the company for the remainder of the week, so that the said ten clerks and expressmen earned each one week's wages during the week in which your petitioner was appointed receiver. And your petitioner annexes hereto the regular pay roll of the North American Phonograph Company for the week ending August twenty fourth, eighteen hundred and ninety four, certified to by Scott Tremain, who was the Treasurer of

the said company. And your petitioner shows that he believes that the said statement is true, and that the said employees earned in the regular employ of the company, and of your petitioner as receiver, during the week aforesaid, in the aggregate the sum of one hundred and twenty nine dollars.

That your petitioner is informed, and believes it to be true, and therefore charges the truth to be, that during the period of two months prior to the date when the bill of complaint was filed in this cause, the said company did not make, execute and deliver any chattel mortgage or chattel mortgages upon its property in the State of New Jersey, or in the City of New York or elsewhere, and that no such mortgage or mortgages have been actually given and recorded or filed for record within that period.

That your petitioner has caused a search to be instituted in the County of Essex, in which he found some of the property of the said company, in the County of Hudson, in which the home office of the said company was located, and in the City of New York where the company did its principal business, and where its principal office and place of business was, and that such search has disclosed no such chattel mortgages or other liens.

That your petitioner believes that the said clerks and the said expressmen have a first lien upon the property of the company in his hands, and upon the proceeds of the sale of any of the property of the company which has come, or may hereafter come into his hands, to the extent

of the sum of one hundred and twenty nine dollars in the aggregate, each one having a lien in the amount specifically set out opposite his name in the pay roll annexed hereto.

Wherefore your petitioner prays that the wages or salary so due to the said employees respectively may be declared to be a first lien upon the property and money belonging to said company in his hands, and that he may be directed to pay the same to the said employees out of the money now in his hands as preferred claims.

Coner Howell
Soly

Essex County, ss.

John R. Hardin, the receiver above named, being duly sworn, according to law, on his oath says that the matters and things set out in the foregoing petition are true to the best of his knowledge, information and belief.

Subscribed and sworn to before me :

this 3rd day of December, 1894

John R. Hardin

Chas. H. Dickson

N *Master in Chancery*
Q. R. T.

Essex County, ss.

Charles A. Dickson being duly sworn, according to law, on his oath says, that he has examined the records of chattel mortgages in the County of Essex and the County of Hudson, in the State of New Jersey, in the name of the North American Phonograph Company, as mortgagor, since the first day of April, eighteen hundred and ninety four, down to the time of the appointment of John R. Hardin as receiver of the said corporation, and that he did not find of record any chattel mortgage executed by said company in either of the said counties.

Subscribed and sworn to before me :
this 3rd day of December 1894 :

Chas A. Dickson

Charles H. Stewart

Notary Public of New Jersey

State of New York,

City and County of New York, ss.

Henry P. Johns being duly sworn, according to law, on his oath says, that he is a clerk in the office of Stimson and Williams, Counselors at Law, practicing in the City, County, and State of New York, and that he is familiar with the records of chattel mortgages in said City and County. That on the *thirtieth* day of *November* eighteen hundred and ninety four, he made an examination of said records of chattel mortgages, in the said City and County in the name of the North American Phonograph Company, as mortgagor, from the first day of April, eighteen hundred and ninety four, down to the time of the appointment of John R. Hardin as receiver of said company, in the State of New York, and deponent further says that he found no chattel mortgage executed by said company during said period, nor any other lien created by said company upon its personal property within said City and County.

Subscribed and sworn to before me :

this *30th* day of November, 1894 :

Henry P. Johns

Essex County, ss.

Scott Tremain being duly sworn, on his oath says. At the time of the appointment of John R. Hardin as receiver of the North American Phonograph Company, I was Treasurer of that company, and had been such officer for more than a year prior to his appointment; as treasurer my office and place of business was in the New York office of the said Phonograph Company, and the New York office was its main business office in the United States. As treasurer I had charge of the payment of all the indebtedness of the company, and particularly had charge of the payment of the office help, and the discharge of the weekly pay roll.

At the time of the appointment of the receiver in this matter, there were ten clerks regularly employed in the office of the said company at salaries ranging from six to twenty five dollars per week; these salaries were payable weekly. In addition to these ten clerks, the company had in its regular employ a man named Douglas, who attended to the delivery of the merchandise sold, he was also on the regular pay roll at a salary of twenty dollars per week.

On August 24th, 1894, three days after the

I know all of the men named on that pay roll. I know of my own knowledge that they all performed their regular services for the week above mentioned, and that the amount set opposite their respective names is the amount which the company had agreed to pay them for their services weekly, and every week, and that this amount was due to them for their services on the twenty fourth day of August, 1894. These men were in the regular employ of the said company at that time, and had been in the regular employ of said company for a period of at least two years, and I have regularly paid them every week for their services in my capacity as treasurer.

Subscribed and sworn to before me :

this 16th day of November, 1894 :

Scott Freeman

Chas. H. Dickson

*Mason notary
of NY*

THE NORTH AMERICAN PHONOGRAPH CO. Pay Roll

NAME	HOURS	TOTAL		OFFICE SALE		Commission		Hrs.		AMOUNT		Hrs.		AMOUNT		Hrs.	AMOUNT
		AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT	AMOUNT		
H. F. Dickie		1000				1000											
E. A. Fontaine		1000				1000											
H. O. C. Kline		1000				1000											
E. G. Dodge		1000				1000											
Henry Lewis		1000				1000											
H. Blacker		1000				1000											
J. Baute		2500				2500											
E. O. Otis		1200				1200											
E. J. Hilory		600				600											
A. J. Miller		600				600											
J. L. Douglas		2000				2000											
		12900				5000											
						4900											
						1000											
						2000											

Success
Office Salary
Commission ap
with St. Expense
Freight & Express

W. T.

8 10 STATE FEE 50

In Chancery of N. J.

Between

Walter Cutting & als,

Compts.

--and--

The North American Phono-

graph Co.

Deft.

Order declaring employees
claims preferred.

Coult and Howell,

Solrs.

Filed December
24, 1894.
Allen W. Smith Ch

Between

Walter Cutting & als, Compts.

--and--

The North American Phonograph

Company, Deft.

It appearing to the court by the duly verified petition of John R. Hardin, the receiver appointed herein, that during the week ending on the twenty fourth day of August, eighteen hundred and ninety four, that being the week in which the said receiver was appointed, the following named persons who were at that time in the regular employ of the said company, as regular employees, and at a regular salary, were entitled to the weekly compensation set opposite their

respective names:

W. F. Dickie	10.00
E. A. Footman	10.00
W. O. C. Kiene	10.00
E. G. Dodge	10.00
Henry Lewis	10.00
H. Blacker	10.00
F. Banta	25.00
C. Otis	12.00
L. Riley	6.00
A. Miller	6.00
J. L. Douglas	20.00
	<hr/>
	\$129.00

And that the said persons were at the time of the filing of the bill in this cause doing labor and service in the regular employ of the said corporation, and that within the period of two months next preceding the date of the filing of the said bill the said corporation had not actually given and recorded or filed for record, any chattel mortgage, or other

lien upon its assets, and that the above named persons are entitled to be preferred as creditors of the said corporation and to have a first lien upon the assets in the hands of the said receiver. And the said receiver by his petition having admitted the claims of the said employees, and having prayed that he may be allowed to pay them their respective claims as preferred claims.

It is on this *fourth* day of December, eighteen hundred and ninety four, ordered that the said claims be, and they hereby are declared to be preferred claims against the said corporation, and that they have a first lien therefor upon the assets of the said corporation in the hands of the said receiver. And it is further ordered that the said receiver be at liberty to pay the said claims forthwith.

Respectfully advised
A. S. Van Fleet
A. S.

Wm. Van Fleet

11
IN CHANCERY OF NEW JERSEY.

Between

Walter Catling, &c., :

et als, :

Compls., : On

-and-

The North American

Bill do

Phonograph Co.,

Def't.

AFFIDAVIT OF MAILING.

Curt & Hume
attorneys,

Sol'rs. *Rec'd*

FILED DEC 14 1894

Rec'd

CLK.

Notice to Limit Creditors.

*To the Creditors of THE NORTH AMERICAN PHONO-
GRAPH COMPANY.*

Notice is hereby given, that on the twentieth day of November, eighteen hundred and ninety-four, an order was made by the Chancellor of the State of New Jersey, that the creditors of THE NORTH AMERICAN PHONOGRAPH COMPANY present to the undersigned, the Receiver thereof, and prove before him, under oath, to the satisfaction of the said Receiver, their several claims and demands against said corporation, within three months from the twentieth day of November, eighteen hundred and ninety-four, and that in default thereof, creditors not so doing shall be excluded from the benefit of such dividends as may hereafter be made and declared by the Court upon the proceeds of the effects of the said corporation, and notice thereof is hereby given to all the creditors accordingly.

Dated Nov. 20th, 1894.

JOHN R. HARDIN, Receiver,
Prudential Building, Newark, N. J.

OF NEW JERSEY.

will c.

The North American Phonograph

Company,

Defendant.

Affidavit of Mailing

NEW JERSEY, ESSEX COUNTY: SS.

CHARLES H. MYERS, being duly sworn according to law on his oath says that he is in the employ of John R. Hardin, the Receiver appointed in the above stated cause: that on the eighth day of December, eighteen hundred and ninety-four, he deposited, in the general post-office of the City of Newark, postal cards addressed to each one of the creditors of said defendant corporation, so far as the same could be ascertained by the said Receiver, on the back of each of which said postal cards was printed a notice, of which the annexed is a true copy.

Sworn and subscribed
before me this 10th day
of December, 1894.

:
:
:
:

Charles H. Myers

Oscar Keen

IN CHANCERY OF NEW JERSEY.

Between

Walter Cutting, Ex'r, et als,

Complainants,

-and-

On bill, &c.

The North American Phonograph

Company,

Affidavit of Mailing

Defendant.

NEW JERSEY, ESSEX COUNTY: SS.

CHARLES M. MYERS, being duly sworn according to law on his oath says that he is a duly employed of John J. Gardin, the Receiver appointed in the above stated cause; that on the eighth day of December, eighteen Hundred and ninety four, he deposited, in the general post-office of the City of Newark, postal cards addressed to each one of the creditors of said defendant corporation, so far as the same could be ascertained by the said Receiver, on the back of each of which said postal cards was printed a notice, of which the annexed is a true copy.

Sworn and subscribed
before me this 10th day
of December, 1894.

Charles M. Myers

Heard Keen

JOHN R. HARDIN,
COUNSELLOR AT LAW,
NEWARK, N. J.

NEWARK, N. J., February 15th, 1895.

The undersigned, Receiver of the North American Phonograph Company, an insolvent corporation, hereby solicits bids for the property of the said corporation hereinafter described, such bids to be in writing, addressed to the subscriber as Receiver of the said North American Phonograph Company, and to be delivered to the said Receiver on or before the fifteenth day of March, eighteen hundred and ninety-five.

I.

4000.
A large stock of miscellaneous phonograph and graphophone machines, tables, cabinets, parts and appliances, including obsolete and available material, inventoried by the North American Phonograph Company in the year eighteen hundred and ninety-four at upwards of Forty Thousand Dollars (\$40,000).

II.

15000.
All the right, title and interest of the North American Phonograph Company of, in and to letters patent of the United States for phonographs, graphophones or appliances, or improvements of either or both, and in any and all licenses granted under any such letters patent to said Company, or to any one else for it. *in all contracts, licenses, etc*

III.

15000.
All the right, title and interest of the North American Phonograph Company in the stock of the various local Companies, whether now on deposit with the Central Trust Company, of New York City, or still retained by the local Companies or held in trust for the said North American Phonograph Company.

IV.

✓
All the good will of the business of the North American Phonograph Company, the same having been preserved by the Receiver by prompt and faithful attention to all legitimate demands

Circular Letter

*Made by J R Hardin, Receiver
of North American Phonograph
Co; advertising for bids*

of the trade from the time of his appointment until now, the Company being, for business purposes at the present time, a going concern.

V.

All the accounts, notes and bills receivable of the North American Phonograph Company, including all claims against local Companies and all installment contracts and mortgages belonging to the said North American Phonograph Company.

VI.

All the right, title and interest of the North American Phonograph Company of, in and to any phonographs or graphophones situated anywhere within the United States or Canada out on trial, lease or conditional sale, or in any way belonging to or controlled by said Company.

The above property of the North American Phonograph Company is to be sold by the Receiver subject to all claims and litigations affecting the property to be conveyed, and the Receiver will not guarantee the property so sold against patent or other litigation. The right, title or interest of the North American Phonograph Company is all that he undertakes to sell, and all that he will expect to convey, and the purchaser buys at his own risk.

The property described under Paragraph I is located at the Edison Phonograph Works, Orange, New Jersey, and can be inspected there by *bona fide* bidders on application to Mr. W. E. Gilmore, Superintendent. Information about the matters referred to in the remaining paragraphs can be had at the office of the Receiver, Prudential Building, Newark, New Jersey.

The list of patents, book accounts, &c., is too long to be annexed to this notice, and while the Receiver will do all in his power to aid bidders to an examination of the property offered for sale, he cannot be expected to furnish correspondents with detailed statements of patents, book accounts, &c. Personal attention will be given to all reasonable requests made by inquirers at his office.

Bids are solicited for all or any part of the property, the Receiver reserving the right to reject any or all bids. The bids are also subject, if accepted, to confirmation by the Court of Chancery of New Jersey if in the judgment of the Receiver such confirmation should be necessary or expedient.

Twenty per cent. of the purchase money must be paid on the acceptance of the bid, and the balance on confirmation of the sale and delivery of proper written conveyance.

The property, if sold, will be delivered at the Edison Phonograph Works, Orange, New Jersey.

JOHN R. HARDIN, *Receiver*

North American Phonograph Company, Prudential Building, Newark, N. J.

10

13

In Chancery of New Jersey.

Between Walter Cutting, Exec.
et al Compl't

and
The *North American*
~~New York~~ Phonograph Com-
pany Deft.

On Bill &c., 6
Petition. 6
 12

McCarter, Williamson & McCar-
ter,

Solrs for and of coun-
sel for petitioners.

Filed Feb 16 1895
Allen W. Smith

Enro. 4 30 - 374

Walter Cushing, Exec., et al.
Complt.

and

On Bill &c.,

The *North American* Phonograph

Petition.

Company,

Deft.

To the Honorable Alexander T. McGill; Chancellor of the State
of New Jersey.

The petition of Richard Townley Haines respectfully shows unto your honor, that an order of this court was made on the twenty first day of August last, in the above stated action, appointing John R. Hardin, Esquire, receiver of said The North American Phonograph Company, and declaring said company insolvent; that on said date, your petitioner was an employee of said company, and had so been ~~from~~ ^{for} a year previous thereto; that on said date, said North American Phonograph Company was indebted to your petitioner in the sum of one hundred and eighty dollars for his personal services as such employee rendered within the two months next preceding the twenty first day of August last. That no part of said sum has been paid to your petitioner, and that there is still due and owing to your petitioner the sum of one hundred and eighty dollars for personal services as aforesaid. Your petitioner is informed and believes it to be true that during the period of two months prior to the date when the bill of complaint was filed in this case, the said company did not make and deliver any chattel mortgage upon ~~this~~ ^{its} property, ^{nor at any other time previous thereto} and that no such mortgage or mortgages have been actually given and recorded or filed for record within that period ^{or at any other time}

Your petitioner further charges that said company made no mortgages upon its lands and real estate of any nature whatsoever. Your petitioner believes that he has a first lien upon the property of the company in the hands of the receiver, and upon the proceeds or sale of any of the property of the company which has come or may hereafter come into the hands of the receiver to the said amount of one hundred ~~and~~ and eighty dollars, wherefore your petitioner prays that the salary so due him may be declared to be a first lien upon the property and money belonging to said company in the hands of the receiver over and above all liens except that which may be ~~acquired~~ acquired by other employees, and that the receiver may be directed to pay the said sum of one hundred and eighty dollars to your petitioner, *and that your petitioner may have such other and further relief as may be agreeable to equity and good conscience.* And your petitioner will ever pray etc.,

Wm. T. W. W. W. W.

Solrs and of
counsel with petitioner.

State of New Jersey:

:ss:

County of Essex: :

Richard Townley Haines the above named petitioner being duly sworn on his oath says, that he is the petitioner named in the above petition, that the things therein contained so far as they relate to his own acts, are true, and so far as they relate to the acts of others, he believes them to be true.

And that said company is justly ~~and~~ indebted to him.

sum of one hundred and eighty dollars for personal services rendered said company within two months previous to August twenty first, the date the said company went into the hands of the Receiver.

Sworn to and subscribed
before me this 14th day
of February, 1895.

} *Richard Morris Davies*

Nicholas W. Bussell
Notary Public of
New Jersey

State of New Jersey:

ss:

County of Essex.

Scott Tremain of full age being duly sworn on his oath says, that at the time the North American Phonograph Company was declared insolvent and placed in the hands of the receiver, he was treasurer of said company, and had been such officer for upwards of two years previous thereto; that he is familiar with the contents of the foregoing petition, and as such treasurer he knows that said company was indebted to said Richard Townley Haines in the sum of one hundred and eighty dollars for salary of said Haines for personal services rendered the company within two months immediately preceding said insolvency proceedings.

Depo nent further states that he is thoroughly familiar with the property and doings of said company, and knows of his own knowledge that said company never made, ~~executed~~ executed or delivered any chattel mortgage or chattel mortgages upon any real estate belonging to it during the entire period with which he was connected with said company.

Scott Tremain

Sworn to and subscribed
before me this 14th day
of February, 1895.

Nicholas W. Bindail
Notary Public of

11 14 STATE FEE
In Chancery of New Jersey.

Between

Walter Cutting et al
Comptt
and

The North American
Photograph Co.,
& Deft

On Bill &c

Order to Show Cause

W. Carter Williamson & W. Carter,
Solic.

Filed Feb 16 1897
Allan J. L. Smith Clk

Exec. of 23, — 1897

Between :

Walter Cutting, Exec et al :

Compt : On Bill &c.,

and :

O R D E R .

The North American Phono- :

graph Company, :

Deft. :

Upon reading and filing the petition of Richard Townley Haines and the affidavits thereto annexed, wherein and whereby it appears that said The North American Phonograph Company at the time of its adjudged insolvency, and the appointment of a receiver thereof, to wit, on the twenty first day of last August, was indebted to said Richard Townley Haines in the sum of one hundred and eighty dollars, for ^a salary and personal services rendered said company within two months previous to the institution of said insolvency proceedings and it further appearing ^{by said petition and affidavits} that no mortgages of any kind whatsoever either upon the goods or upon the real estate of said company were made by it, at any time whatsoever, it is on this ^{sixteenth} ~~fifteenth~~ day of February, eighteen hundred and ninety five, ordered that John R. Hardin, the receiver appointed in the cause, do show cause why the said Richard Townley Haines should not be declared to have a preferred claim upon the assets in the hands of John R. Hardin, receiver of said The North American Phonograph Company for the payment of said one hundred and eighty dollars, and why said John R. Hardin receiver as aforesaid should not pay to said Richard Townley Haines as soon as practicable, the aforesaid sum of one hundred and eighty dollars, said cause to be shown to the Chancellor at the Chancery Chambers at Newark on Tuesday the nineteenth day of February, instant, at ten o'clock in the forenoon, and that a copy of the petition and order be served on said receiver one day before said hearing, ^{which copies may be made up.}

Respectfully advised

John R. Emery
Chancellor

¹⁵
McClary, J. G.

Between

Wentworth
State Cooper
and

The North American
Photograph En-
gineering Co.

On
Bare
of

Affidavit of Service

FILED FEB 20 1895

Recd W. J. Smith

W. J. Smith
CLK.
J. M. Carter

W. J. Smith

On January 21st

Between

Walter Canning et al
Complainants

and

The North American
Photography Company
Defendants

Dr. B. B. B.

Elder Canning

State of New Jersey, Thomas N. M. Carter
Jr. of full age being duly sworn
on his oath says that he served
a copy of the petition of
Richard Downing Barnes in
the above stated cause
filed on February sixteenth
instant and of the order to
show cause granted thereon
on John R. Gardner Esquire
Receiver of the above named
defendants by delivering true
copies thereof to him on
said sixteenth day of February
instant

Sworn and subscribed
this 19th day of February

1895

Thos. N. M. Carter

TO SELL THE WORKS.

Receiver Hardin Will Dispose of the North American Phonograph Co.

John R. Hardin, receiver of the North American Phonograph Company, is getting the company out of its present shape. He has turned the company over to the available assets of the company and has closed the business of the company which were in the various cities of the country.

On or so Mr. Hardin issued a notice as receiver in which he solicits bids for the property of the company, which he intends to sell as soon as possible. The property was recently inventoried at \$40,000. The works are in Orange.

The sale, if any is made, will be subject to the confirmation of the Court of Chancery. When all the available assets have been turned into cash, the receiver will pay creditors a pro-rata share of the money and will then make his final report to the Chancellor.

ADVERTISER (NEWARK)
N.J. 2/22/95

THE PHONOGRAPH TROUBLE AGAIN.

Asking that the Receiver of the North American Company Be Restrained.

In the Chancery Chambers this morning Vice-Chancellor Emery granted an order, which he made returnable this afternoon, in the case of the New-England-Phonograph Company against the North American Phonograph Company.

The plaintiffs were represented by F. F. Guild, who asked that Receiver Hardin, of the defendant company, be restrained from selling certain stock which counsel for the New-England Company alleges belongs to his client. The sale was to have been held today.

NEWS (NEWARK), N.J.
3/19/95

ARGUED FOR THE RETURN OF STOCK

Hearing in Suit Against the North American Phonograph Company.

NEWARK, N. J., March 20.—Argument was heard to-day by Vice-Chancellor Emery in the action brought by the New-England-Phonograph Company against the North American Phonograph Company on an order to show cause why the receiver of the latter concern should not be restrained from disposing of certain stock which the New-England company claimed. F. F. Guild, who made the application, introduced President John B. Gleason of the plaintiff company, who made the argument. He said the New-England company some time ago gave the North American Phonograph Company 6,000 shares of the former's stock on condition that the North American company would perform certain contracts and guarantee the performance of certain other contracts.

The North American Company, being insolvent, and its affairs in a receiver's hands, is not able to live up to its contracts, the plaintiff contends, and should be compelled to cancel and return the 6,000 shares of stock. It was further alleged that the stock was transferred without any consideration being given.

The Vice-Chancellor was unable to decide the questions involved as presented, and he named April 23 as a day on which he would hear testimony from both sides.

N.Y. TIMES 3/21/95

EDISON IN CONTROL.

Pays \$125,100 for Assets of the North American Phonograph Company.

WILL WORK ON NEW LINES NOW

Operas and Entire Novels to Be Produced on the Machine.

INTERESTING CHAT WITH THE WIZARD

SPECIAL TELEGRAM TO THE DISPATCH.

NEW YORK, March 31.—Thomas A. Edison and his phonograph are going to join hands once more, and the wizard of Menlo Park promises improvements and novelties which will astonish the public.

The phonograph has been controlled by the North American Phonograph Company, which went into the hands of Receiver John H. Hardin last August. The company was capitalized at \$6,000,000 in 1888, and Jesse H. Lippincott, of Pittsburg, the promoter, went insane when he found it was a fizzle.

The receiver has advertised for bids for the entire assets, and Mr. Edison's offer of \$125,100 has been accepted. The acceptance of the bid must be sanctioned by the Chancellor of New Jersey. A circular has been sent by Receiver Hardin to the creditors and stockholders of the bankrupt company stating that on Monday, April 8, he will request direction from the Court to convey the property to Mr. Edison.

Edison Didn't Lose Anything.

The phonograph has not been a commercial success, but there is nothing to show that the inventor has lost any money through it. Mr. Edison sold his holdings in the Edison Phonograph Company to the North American Company for \$200,000. The North American Company granted the Edison works the sole right to manufacture the phonograph.

In 1892, the North American Company became embarrassed. It issued \$200,000 bonds, of which \$220,000 was Mr. Edison's interest on these bonds to the amount of \$6,500 was due Mr. Edison May 1 last. He demanded payment, and the company, being unable to comply, Mr. Edison filed an affidavit in the Chancery Court, which resulted in the receiver's appointment.

"The North American Company, in the course of its business," said Mr. Edison in that affidavit, "became indebted to me \$78,518.37 in addition to the bonds, and on April 1, 1894, the company gave me its promissory note for that amount, payable in ten days. The company had become possessed of

the total cash stock of the Edison Phonograph Company, aggregating 12,000 shares, and it pledged the whole thereof to me as collateral security for the payment of the note.

Why He Bought the Concern.

"I have many times demanded payment on the note, but it has never been paid, and, on August 13, after due notice, the stock was sold at auction by me at the court house at Jersey City for \$10,000. The remainder of the monies secured by the note and stock have never been paid. I am the President of the Edison Phonograph Works. The North American Company is indebted to that works for about \$36,000.

"I am familiar with the property of the North American Company, and its complete output of phonographs, and its rights in the inventions of

phonographs; and the phonographs are sold and not worth over \$25,000. In my opinion the right to make these phonographs is of no value at present. For the past three years the company has had no phonographs built."

The Dispatch correspondent went to the Wizard's house at Llewellyn Park to-day to ask why he had offered \$125,100 for the property of which he spoke so slightly in the affidavit quoted. Mr. Edison said:

"The company has one asset which I am willing to pay a high price for—that is a claim on all my future inventions and improvements of the phonograph. I don't care to have anyone else have a lien on my brains, so I made a bid which proved higher than all others. I shall manufacture the phonographs myself now, and expect to keep all the promises I made when I first introduced them.

Will Produce a Novel.

"I am going in for households, instead of nickel-in-the-slot machines, and in a short time expect to produce an entire opera or a complete novel on a cylinder. It will cost a good deal, but it will pay me.

"I suppose it will cost me \$2,000 to have the opera of 'Norma' sung into the machine, but I can produce that on almost as many cylinders as I please. I think I can afford to pay Du Maurier more than the Harpers have, so that any gentleman can have 'Trilby' read to him in his parlor in the course of an evening. I shall manufacture the perfected phonograph individually."

Then your correspondent asked the question that the Wizard always expects to hear from newspaper men:

"What is the latest?"

"Nothing at all," returned Mr. Edison, smiling, "except the kinetophone, the combination of kinetoscope and phonograph. I'm going to reproduce the motions and words of a life-size speaking figure. I've already got the speaking and moving figure up to half life size. I've paid more attention lately to my mine than anything else. Very soon now I'll get to work in the laboratory again."

DISPATCH PITTSBURG,
P.A. 4/1/95

In Chancery of New Jersey

Between STATE FEE 50

Walter Tilling
Exec et al

and

The North American
Phonograph
Company

} On
the 10th

Order to pay

FILED 1895

Alexander Hornsby

in Trust as Administrator CLK.

On the 10th

Wm. H. Hornsby

Pls refer to court file No. 33-375

Between :
 Walter Cutting, Executor and :
 others, Complt. : On Bill &c.,
 and : Order.
 The North American Phonograph :
 Company, Defendant. :

The petition of Richard Townley Haines having been duly filed in the above stated matter, on the sixteenth day of February instant, whereby it appears that the said North American Phonograph Company at the time of its adjudged insolvency, to wit on the twenty first day of last August was indebted to said Richard Townley Haines in the sum of one hundred and eighty dollars for salary and personal services rendered said company within two months next preceding the institution of said insolvency proceedings and that no mortgage of any kind whatever had been executed by said company upon its property at any time, and order having been made in said cause on said sixteenth day of February, eighteen hundred and ninety five, directing John R. Hardin the Receiver appointed in said cause, to show cause before the Chancellor at the Chancery Chambers at Newark on ~~xxxx~~ nineteenth day of February instant at ten o'clock in the forenoon why he should not pay said Richard Townley Haines the aforesaid sum as soon as practicable, and it further appearing by affidavit ~~th~~ of Thomas N. McCarter, Jr., that a copy of the petition and order was served on said John R. Hardin within the time required by said order, to wit, on the sixteenth day of February instant, and now on said nineteenth day of February instant said John R. Hardin not appearing to ~~defend~~ *appear*

application
said ~~matter~~, it is ordered that said John R. Hardin receiver as aforesaid, do pay as soon as practicable the sum of one hundred and eighty dollars out of the funds of said defendant corporation in his hands or ~~that~~ that shall come into his hands hereafter.

And it is further ordered that said claim of Richard Townley Haines be a preferred lien upon the assets of said defendant corporation ^{for payment to creditors} over and above all other liens except such may hereafter be proved by other employees.

Respectfully submitted

John R. Emery

vice Chancellor

JOHN R. HARDIN,
COUNSELLOR AT LAW,
NEWARK, N. J.

PRUDENTIAL BUILDING, 761 BROAD STREET.

Newark, N. J., March 28, 1895.

*To the Creditors and Stockholders of the North
American Phonograph Company.*

You are hereby notified that Mr. Thomas A. Edison, of Orange, N. J., has offered the sum of \$125,100 for the entire assets of the North American Phonograph Company not heretofore disposed of or realized on by the Receiver of said Company, where-soever situated, and of whatsoever nature, and that the subscriber, Receiver of said North American Phonograph Company, will, on Monday, the eighth day of April, eighteen hundred and ninety-five, at the Chancery Chambers, Jersey City, New Jersey, report said offer to the Chancellor of the State of New Jersey, and recommend its acceptance and request direction from the Court to convey said property to said Edison under such conditions as the Court may fix.

And you are hereby further notified to attend at said time and place and be heard, if you desire, on the matter so to be reported to said Court.

Very respectfully,

JOHN R. HARDIN,
Receiver North American Phonograph Co.

EXHIBIT No. 131.

#21 4/8/95

(Notice of Objection by Nolan to Receiver Relative to
Court House Sale, Served April 8, 1895.)

In Chancery of New Jersey.

BETWEEN WALTER T. CUTTING, EXECU-
TOR, & CO., AND OTHERS,
Complainants,
AND
THE NORTH AMERICAN PHONOGRAPH
COMPANY,
Defendant.

Dear Sir:

Take notice that as creditor of the said Company I demand of you that you immediately take proceedings to avoid the pretended sale to Thomas A. Edison of the stock of the Edison Phonograph Company, alleged to have been made on the 13th day of August, 1894, and to enjoin his disposing of said stock and to provide for the proper administration thereof as part of the assets of the North American Phonograph Company and to enjoin any other disposition thereof.

Dated April 6th, 1895.

MICHAEL W. NOLAN,
578 Bedford Avenue,
Brooklyn, N. Y.

1922
Mitchamery of M. J.

STATE FEE 50

Between
Walter W. Cutting
Ex to. Cmpth. Corp.
And
North American Photo-
graph Company
(Left)

Order extending
time to file claims etc.

Wm R. Handen
Rec'd from

FILED

Rec'd

Exro. 4-23-403

North American Photo-
graph Company Deft. { Order extended:
ing time to
file proof
of claims

The Receiver represents to
the Court that certain claims
against the North American Photo-
graph Company owing to defects
in proof must be rejected unless
opportunity is given to correct
the same, and the Receiver stating
to the Court that he is satisfied
that said claims are entitled to
be proved, and the time heretofore
limited within which to prove
claims against said Company
by the order of this Court, having
expired,

It is therefore on this Eighth
day of April. Eighteen hundred and
ninety-five on motion of John
Richardson, Receiver of said de-
fendant Company, ^{over} that the time
within ^{which} claims may be proven a-
gainst said defendant Company
before its Receiver be extended
until the tenth day of April

WONDERS TO COME

EDISON SEEKS TO CANCEL A LIEN ON HIS BRAINS.

A Jersey Court Will Decide To-Morrow If His Offer of \$100,000 More Than the Value and Places on the Phonograph is Enough—The Inventor's Plans for the Future.

As a preliminary to the introduction of new wonders in electrical science the Chancellor of the State of New Jersey will be asked to-morrow to cancel a mortgage on the brains of Thomas A. Edison, the wizard of Menlo Park. It is a queer fact but there is a company in existence which has a lien on the inventive genius of the electrician, and Edison is willing to pay \$125,000 to secure possession of it and continue in his wonder-working career untrammelled by the check-rein of others. That is \$100,000 more than he considers the lien worth to anybody else.

Some of Mr. Edison's plans depend entirely upon the restoration of his right to the sole and exclusive use of his own mind, and the complete control of the products of his inventive genius. It is a comment that the inventor has been active in his laboratory for the past few years than formerly, and has been fewer surprises upon the public. In fact he has tried to avoid notoriety and sought to keep out of the newspapers. Some folks have thought that Edison had reached the end of his inventive career, and was ready to retire from active business, if he had not already done so. He is a very rich man,

N.Y. NEWS 4/7/95

EDISON'S PATENTS.

A Complicated Suit Over the Phonograph.

There was a large attendance of eminent lawyers from Newark and New York at the chancery court this morning in the case of the North American Phonograph Company and its creditors. The case was continued one week. It is a complicated suit, involving large amounts and the ownership of a number of Edison's patents. The company is in the hands of a receiver, Mr. John A. Harden, of Newark. It has debts to the amount of \$467,000. The plant is in Orange in connection with Edison's works. No cases of local interest were tried to-day. That of the North Hudson Traction Company and Hoboken was continued one week.

JOURNAL (JERSEY CITY)
N.J. 4/8/95

EDISON'S OFFER OPPOSED.

JERSEY CITY, April 8.—An application for the sale of the assets of the North American Phonograph Company was made before Chancellor McGill here yesterday by John R. Hardin, of Newark, who was appointed receiver of the company in August last. Mr. Hardin's report showed that the claims against the company amounted to \$467,000, of which Thomas A. Edison held 52 per cent. Edison offered \$125,000 for the assets of the company. If this offer was accepted it would give \$150,000 to be divided among the creditors of the company, but the stockholders would get nothing. The offer made by Edison was opposed by C. Adriance Bush, Mr. Keasbey and others who represented the stockholders. After considerable argument the case was postponed for one week.

ADVERTISER, NEWARK
N.J. 4/9/95

and there was nothing to prevent him from doing so, except his own inclination. As a matter of fact, I learned yesterday from a close personal friend of Mr. Edison, the inventor's mind has lately been occupied with planning something more wonderful than anything he has yet invented, and concerning which only a hint has leaked out. This is a combination of the kinoscope and the phonograph, which, when it is perfected, will become a rival of the theaters. The kinoscope reproduces by means of a series of photographs, the motions of a living creature, so that it seems to the eye as if the observer was looking at the movements of an animate being, while the phonograph gives the natural sound of a person's voice and other noises. The kinetophone will do both at once.

Edison's idea is to unite the kinoscope and phonograph so that the figure in the machine can be seen to move and heard to speak at the same time. With the sermons of a clergyman like Talmage, whose utterances are now sent all over the world on phonographic cylinders, this combination is comparatively easy to effect. This is true also of a man making a speech and is not so hard where one or more persons are engaged in conversation. In fact as soon as Mr. Edison recovers the entire possession of his brains he will begin experiments, which he has already formulated, to put this combination into effective commercial shape.

Wonderful as this machine will be, it is by no means satisfactory to the inventor, and his energies will be devoted to perfecting it until all of its possibilities have been attained. Mr. Edison himself said a few days ago that the ultimate result of a combination of the kinoscope and phonograph would involve nothing less than the complete reproduction of operas and plays, with life-size figures, speaking or singing their parts and with the mise-en-scene completely reproduced.

The cost of the real production of such a play for the purposes of having it reproduced by the machine would be very great. It might be as high as \$10,000 for the single performance required. As it would enter actively into competition with the theaters, some trouble might be had in securing permission for reproducing plays which met with popular favor, but Mr. Edison thinks that it would be possible to make arrangement to secure everything worth reproducing in the machine.

The machine will resemble an upright piano somewhat in appearance. When it reaches its last stage of perfection it will reveal the interior of a theater when opened for an evening's entertainment in the owner's parlor. The guests may sit and watch and hear the play. There need be no waits between acts unless desired, and an act or scene can be repeated simply by turning back the wheels.

As it is now the phonograph and kinoscope have reached a state bordering on perfection for their separate purposes, but many changes are necessary in order to get them to work together in producing life-size figures which move naturally and talk loud enough to be heard through a drawing-room. Mr. Edison does not propose to have any Punch and Judy show about his kinetophone, but will give a finished and artistic reproduction of a play or opera. Of course, an invention of this character requires a vast amount of work, and the machine may not be ready for use for two or three years.

Another idea of Edison's is likely to cause the printers some concern. It is to have novels and newspapers reduced to phonography. Take a novel like "Tribby," for instance. He would have the characters assumed by persons with suitable voices and have the whole novel talked into the machine. Cylinders would be duplicated in quantities and the buyer would take one home, place it in his

phonograph, start it going and hear the story. He could rest his eyes, enjoy a smoke and listen till he was tired. All of his friends and family could listen at the same time.

Carrying this idea further, a talking newspaper could follow. Newsboys would distribute cylinders with the news on them. At breakfast the morning paper cylinder would tell the news from the phonograph while the folks ate their meal, and in the evening at dinner the contents of the afternoon paper cylinder would be given orally. In this way much time could be saved and the chatter of the dinner table gossip of nothings would no longer annoy the others.

Mr. Edison said recently that he believed the newspaper of the future would be published by phonograph. His reason for this was that the eyesight of people was becoming poorer, the time of busy people was becoming more and more occupied and many of the newspapers were now so large that it was impossible for busy people to read them through.

Mr. Edison has not, however, gone into this branch of the phonograph's possibilities, and only spoke of it as showing what the future may have in store for his invention and for the newspapers.

Now, however, he proposes, if allowed to do so, by the court to-morrow, to push the use of the phonograph and kinoscope as a household article, paving the way for the introduction of the kinetophone which will combine the two. The phonograph is directly involved in the legal difficulties. Mr. Edison sold his invention to the North American Phonograph Company, which was capitalized at \$250,000 in 1888. Since then the company has had a rocky existence. For some reason the company failed to make a commercial success of the machine, and for three years no phonographs have been constructed.

Mr. Edison retained the right to manufacture the phonographs, and the company owes him over \$78,000 besides his stock. He recently made affidavit that the concern's effects were worth not over \$25,000, but he bid \$125,000 for the same. An explanation of this big difference in valuation which was made by Mr. Edison set out the workings of his inventive mind. The concern's property would be worth no more than \$25,000 to anybody but Edison, while he could make it worth as much as he willed.

The North American Phonograph Company possessed one asset which depended entirely on Mr. Edison's own motion. That was a claim on all of his subsequent inventions in the way of improving the phonograph or in connection with it. It was on this account that he bid \$100,000 more than the assets were worth to anybody else and that represents the present value which he places on the kinetophone as far as it has developed in his experiments.

If the sale is confirmed by the court to-morrow the inventor will go rapidly ahead with the kinetophone. If not, the machine may not be constructed for years, because work on it will be abandoned until the lien on Edison's brains is wiped out.

Mr. Edison expects that the sale will be consummated. Other people cannot control the action of his mind, and they undertook to do so he would devote his attention to other branches of wonder-working in which they had no concern. In other words, owners of the mortgage on his mind could not compel Edison to invent anything, although they could take from him the fruits of an improvement made on the phonograph. In fact, lately Mr. Edison has been devoting most of his time to his mining interests, pending a disposition of the affairs of the bankrupt phonograph company.

Edison appears to be no bad business man. His phonograph invention he sold to a stock company, agreeing to give it the benefit of all improvements upon it which he might afterwards devise. The company was organized in that home of bubble corporations, New Jersey, and soon ran in debt to the amount of nearly half a million. A receiver was appointed, and now he has agreed with Edison to sell him back the patents and all the plant for \$125,000. This gives about thirty per cent. to the creditors, and nothing to the stockholders, but as nobody will give more, the sale is likely to be confirmed.

NEWS (NEW HAVEN)
4/10/95

EDISON'S \$125,000 BID.

IT PROMPTLY LAWYER KEASBEY TO SAY THINGS ABOUT THE WIZARD.

The bid is for the North American Phonograph Company's assets. Keasbey, representing stockholders, declares that Edison is trying to freeze them out.

John R. Hardin, receiver of the North American Phonograph Company, gave notice to the creditors of the company several days ago that he had received from Thomas A. Edison a bid of \$125,000 for the company's remaining assets, and he proposed to submit the bid to Chancellor McGill. He sent out the notice so the creditors, if they had objections to the acceptance of the bid, might appear before the Chancellor. Several of the creditors were represented by counsel, and there was a sharp legal fight on an application for an examination of the North American Company's books. The company failed last August. Receiver Hardin found liabilities to the amount of \$450,000 and assets estimated at \$150,000. The assets consisted principally of patents. Before the receiver took charge of the property Mr. Edison had foreclosed a lien on it, and, when his bid for the remaining assets was made, the stockholders suspected that his purpose was to get control of the company.

When the case came up yesterday Lawyer Edward Keasbey, representing Henry Stern and Mr. Seaman of this city, who are stockholders, remained asking the Chancellor to order an examination of the North American Company's books to find out the real condition of the company's affairs. The object, he said, was to determine whether Mr. Edison's bid was a fair one or not. Before Mr. Keasbey had finished reading the petition Lawyer Lum of Newark made a protest.

"Your Honor," he said, "Mr. Edison has been placed in a false light, and I wish to explain his position."

"I cannot hear you on that point," said the Chancellor. "There are no papers before me."

"I object to any remarks about Mr. Edison," said Lawyer R. Wayne Parker of Newark.

"When I began my argument recently in a suit between the phonograph company and the United Edison Company I asked counsel if all the papers were in, and he said they were."

"I beg your pardon," said Mr. Lum, "I never said anything of the kind."

Mr. Parker looked at Mr. Lum in a surprised sort of way, and then said that if Mr. Edison's lawyer desired to straighten out the facts concerning Mr. Edison's agreement with the phonograph company he must file a statement of the company's debts, so that counsel on the other side would know what they had to rebut. Chancellor McGill agreed with Mr. Parker, and gave Mr. Lum until April 20 to prepare such a statement.

Mr. Keasbey then spoke on his motion for an order to inspect the books. He said that the North American Phonograph Company bought Mr. Edison's rights in the invention and started in business with a capital of \$6,000,000. There was a distinct understanding, the lawyer said, that the company's territory should be confined to the United States and Canada. The United Edison Company bought from Mr. Edison for \$500,000 the right to sell phonographs in every other part of the world. Mr. Edison made the phonographs for both companies at his laboratory in Orange, N. J.

The United Edison Company discovered. Mr. Keasbey said, that the North American Company, of which Mr. Edison was President, was shipping phonographs to England, France, and other parts of Europe in violation of the agreement, and desired only when the United Edison Company procured an injunction from Vice-Chancellor Van Fleet. Mr. Edison, Mr. Keasbey said, was President of the company which manufactured the phonographs for the other two concerns, and drew a large salary for promoting the interests of each and improving the phonographs. But he had neglected the interests of the United Edison Company and pushed the business of the North American Company.

"When we find," said Mr. Keasbey, "an offer to buy the property of the North American Company made by its President, who is bound by his contracts to do all in his power to promote the company's interests (which, by the way, he has not done; but, on the contrary, he foreclosed a lien on the stock and bought it in for a very small sum), the stockholders have a right to ask, 'Is this a good bid?' Under such circumstances, Mr. Keasbey declared, the stockholders, who suspected that an effort was being made to freeze them out, had a right to ask for an inspection of the books. Mr. Stern, Mr. Hesse, Mr. Boston, and others who held 1,200 and 1,000 shares of stock had never been notified of meetings, and were kept in the dark concerning the affairs of the company.

"You have made out a very strong case," said Chancellor McGill, "and I am not sure that I should prevent the stockholders from looking into the books. They ought not to be forced to make a jump in the dark. I would like to ask the receiver whether he objects to hostile people inspecting the books."

Receiver Hardin said that he certainly had objections. He declared that there was never any contract between the two companies. He added that the petitioners simply wanted to get access to the books for the purpose of getting information to be used in the litigation between the companies. "If Mr. Stern," he said, "will tell me what facts he wants I will furnish them, but I certainly object to opening the books at this time."

"If the petitioners," said the Chancellor, "will put their questions in writing and submit them to Mr. Hardin on Monday next, I think I will direct him to prepare a balance sheet. I will not dispose of Mr. Edison's bid until the stockholders know something of the state of the company's affairs."

N.Y. SUN APRIL 13, 1895

BIG SUIT OVER THE PHONOGRAPH.

Involves Inventor Edison's Connection with the American Phonograph Company.

OPPOSED TO HIS CONTROL.

Lawyer Boston Objects to the Sale of the Company's Assets to the "Wizard."

HE DEMANDS AN ACCOUNTING

Lawyer Charles A. Boston, of No. 66 Broadway, who held \$2,600 of the capital stock of the defunct North American Phonograph Company, of which Thomas A. Edison was president, has begun a legal campaign against permitting Receiver John R. Hardin to sell the remaining assets of the corporation to Mr. Edison, who has an interest of \$5,100 for the property. Mr. Boston says that Mr. Edison is no less a "wizard" than of electricity.

According to the petition of Receiver Hardin for permission to accept the offer came up before Chancellor McGill, in Newark, N. J., yesterday, and was adjourned to April 20, in order to give Mr. Edison opportunity to answer the charges made by Mr. Boston. The Receiver was directed to furnish to any stockholder or creditor who may make application in writing on or before April 22 answers to questions touching on the affairs of the company, provided they be not prejudicial to the interests of his trust.

According to Mr. Boston, Mr. Edison's connection with the North American Phonograph Company has been highly profitable. From a director in 1890, under contract that all improvements to the phonograph should become the property of the company, he had advanced, in August, 1894, when a receiver was appointed, to the position of holder of all important phonograph patents and of eighty-three per cent of the claims against the insolvent concern.

TRANSFERRED VALUABLE STOCK.

When the North American Phonograph Company was organized, in 1887, with a capital stock of \$3,000,000, 12,000 shares of the capital stock of the Edison Phonograph Company, bought in for \$500,000, constituted a large part of the property acquired and is said to have been the most valuable share of the assets of the company, securing to it the phonograph rights, which were the basis of its business and its reason for existence. The stock, it is alleged, was transferred by Mr. Edison. The bill of complaint and the papers accompanying it, filed by Mr. Boston, show that Mr. Edison claimed to have become a creditor of the company for an unsecured sum of \$78,518.37. While president of the company, it is alleged, he obtained its promissory note for the amount of the debt and procured a pledge to himself as security of the 12,000 shares of Edison Phonograph stock, which he had previously sold for \$500,000. Mr. Boston asserts that this was an unwarranted and unlawful disposition of the property of the company.

It is further alleged that the stock was sold to a Jersey City newspaper, to take place August 13, 1894, three days before the company went into the hands of a receiver. It is charged that the announcement was grossly inadequate and insufficient in detail, and was designed to comply with legal requirements, while awakening no public interest. The sale, it is claimed, was a mere formality, Mr. Edison buying for \$10,000 the stock which he had sold seven years before for \$500,000, and thereby rendering the hopeless insolvency of the company inevitable, in that he secured its entire rights in phonograph patents.

Mr. Boston further charges that Mr. Edison is largely interested in the Edison Phonograph Works, and that the exclusive contract made with it to manufacture machines was in its practical effects a contract with him. He also alleges that the contract with the Edison Phonograph Works was highly detrimental to the North American Phonograph Company and that prices far in excess of reasonable rates were exacted from the company thereunder; and that a cause of action exists in favor of the North American Phonograph Company by reason of Mr. Edison's connection with both companies for a rescission of the contract and an accounting between the company and the works and for the payment by the works to the company of any balance found to be due the company by the works in excess of the actual value of the machines manufactured and delivered by the said works to the said company.

WILL JEOPARDIZE ALL RIGHTS.

Mr. Boston charges that in accepting the offer of Mr. Edison and adopting the recommendation of the receiver the Court will jeopardize and may extinguish all rights of action of the company against the Edison Phonograph Works and Mr. Edison arising out of the alleged contract and the payments thereunder.

Mr. Boston charges that under the presidency of Mr. Edison, and while he was a director of the North American Phonograph Company, the company was permitted to be so conducted that within four years and seven months after the statement in the circular letter addressed to him during three years of which no machines were manufactured for the company, it not only dissipated all of its cash resources, but became indebted, according to the claim of Mr. Edison, to him for \$208,000, as follows:—\$220,000 upon the company's bonds, and \$78,000 upon the company's promissory note, and to the Edison Phonograph Works \$36,000 for machines.

It is alleged that the foregoing facts demand that there should be a full and complete accounting between Mr. Edison and the company, and that he should be compelled to show how he acquired the property and claims against the company, and whether he acquired them for full value, or whether, by reason of his fiduciary relation to the said company, he is not a trustee of the property for the company. Mr. Boston says that he believes that Mr. Edison is also liable in damages to the company for his alleged negligent management of the affairs committed to him as director and president of the company.

ENTITLED TO THE IMPROVEMENTS.

It is alleged that Mr. Edison has contemplated the combination of the kinesiograph and phonograph since 1887; that while he was a director and the president of the North American Phonograph Company he and his employees and assistants were working to that end; and that under the facts represented in the circular letter sent out the North American Phonograph Company was and is entitled to the benefit of the improvements made by Mr. Edison. Mr. Boston charges that the conduct of Mr. Edison was dictated by his individual interest as opposed to the interests of the North American Phonograph Company, and that all of his transactions have been designed to secure to himself the control of phonograph patents.

Mr. Edison, it is asserted, has converted to his own use valuable property of the North American Phonograph Company, and a cause of action therefore exists against him.

N.Y. HERALD 4/13/95
TELEGRAM Story of 4/12/95

Identical with EVENING

SCORED INVENTOR EDISON.

He Is Accused in Court of Trying to Freeze Out Stockholders in a Defunct Phonograph Company.

Counselor Edward Keasbey, in the Court of Chancery, Jersey City, yesterday made charges against inventor Thomas A. Edison, during arguments on the application of Receiver Hardin, of the defunct North American Phonograph Company, for permission to sell to Mr. Edison the remaining assets of the company, for which he offers \$125,000.

Mr. Keasbey, representing stockholders, opposed the application. He intimated that Mr. Edison, who was a large stockholder in the company, and its President, had foreclosed a lien he had held in the hope of freezing out the other stockholders and thus get control of the company. The offer of \$125,000 for the remaining assets, which included valuable patents, Mr. Keasbey said, was inadequate. He insisted that before the Chancellor considered the proposition he should grant the stockholders the privilege of inspecting the company's books.

Chancellor McGill told Mr. Keasbey that he had made out a strong case. "I am not sure," he added, "that I should prevent the stockholders from looking into the books."

Receiver Hardin said he had decided objections. He declared that the petitioners simply wanted to go on a foraging excursion through the books, to collect facts to be used by the United Edison Company against its former rival. He said if the petitioners would indicate what facts they wanted he would furnish them.

The Chancellor then directed the petitioners to put their questions in writing and submit them to the receiver before next Monday.

N.Y. WORLD, APRIL 13/95

PHONOGRAPHIC ROW.

Stockholders Oppose Wizard Edison's Little Bid.

Thomas A. Edison's bid of \$125,000 for the remaining assets of the insolvent North American Phonograph Company created a nice rumpus in Chancery Chambers this morning. Counselor John R. Hardin, receiver of the company, made a report to Chancellor McGill this morning of Mr. Edison's offer, and a few days ago notified the stockholders of the company that he would do so, and if they wanted to object they must appear by counsel today. Several of them accepted the invitation, and a sharp legal fight ensued. Last August this phonograph company failed. Mr. Hardin was appointed receiver, and he discovered that there were \$450,000 worth of proved debts. The patents and other assets amounted to about \$150,000. The stockholders, finding that Mr. Edison had foreclosed a lien he held on the property of the company, and had offered a bid for its assets, they at once suspected that the wizard was trying to gain control of the company and squeeze out the remainder of the stockholders.

One of these, Mr. Henry Stern, of New York, represented by Mr. Edward Keasbey and Mr. Seligmann, presented a petition, which Mr. Keasbey read to the Chancellor this morning, asking him to allow an inspection of the books with a view to ascertaining the real status of the company's affairs, and so determine whether or not Mr. Edison's bid was fair. But before Mr. Keasbey could say what his petition was, Counselor Linn, of Newark, jumped to his feet, saying:—"Your Honor, Mr. Edison has been placed in a false light, and I wish to explain his position."

"I cannot hear you on that point," gently interposed the Chancellor. "There are no papers before me, and words will vanish since probably you may take an appeal from any order that I may make."

Mr. R. Wayne Parker strenuously objected to any remarks about Mr. Edison's position, for the reason that when he (Mr. Parker) began his argument recently in a suit between the Phonograph Company and the United Edison Company, he asked counsel if all the papers were in, and he replied, "Yes."

"I beg your pardon," said Mr. Linn, "I never said anything of the kind." Mr. Parker continuing, said that if Mr. Edison's lawyer wished to straighten out facts concerning an agreement with the Phonograph Company, he must file a petition setting out the debts against the company so that counsel on the other side might know what they had to rebut. This part of the proceedings was then laid over until April 29 to give Mr. Edison an opportunity to prepare a petition.

DIVIDING THE WORLD.

Then Mr. Keasbey proceeded to raise the storm over the request to inspect the books. He said that some time ago Mr. Edison sold his phonograph rights to the North American Phonograph Company, which began business with six millions of dollars. There was a distinct understanding that the American Company should only sell phonographs throughout the United States and Canada. The privilege of selling phonographs to every other part of the globe Mr. Edison sold to the United Edison Phonograph Company for \$500,000. The phonographs for both companies were made at Mr. Edison's manufacturing works at Orange. It was found, said Mr. Keasbey, that the North American Company, of which Mr. Edison was President, was sending phonographs to foreign express companies for shipment to England, France and parts in Europe, in defiance of their contract. The United Edison Phonograph Company at once procured a restricting order from Vice Chancellor Van Fleet ordering the North American Phonograph Company to desist. Mr. Edison, counsel said, as President of the works which manufactured the phonographs for both concerns and drew a large salary of thousands of dollars from each to promulgate the affairs of each by improving the phonograph, neglected the interests of the United Company and encouraged the rival company to sell goods outside the United States and Canada.

DOUBTS THE WIZARD'S MOTIVE.

"When we find," said Mr. Keasbey, "an offer to buy the property of the North American Phonograph Company from a man, a responsible president, and bound by contracts to give all in his power to promulgate the interests of a company, and which, by the way, he has not done, but foreclosed a lien on the stock and bought it back for a very small sum, the stockholders have a right to ask, 'Is this a good bid?'"

Mr. Keasbey insisted that it is a well settled principle in equity procedure that the books of a company may at all times be at the disposition of a stockholder, and he must ask that the books of the North American Phonograph Company be inspected. Mr. Henry Stern, Mr. Hesse and Mr. Boston, some of whom owned 1,200 and others 1,000 shares of stock, he argued, had a right to see what had been done. They were never notified that meetings were being held, and were invariably kept in the dark. "You have made out a very strong case," said Chancellor McGill, after Mr. Keasbey finished, "and I am not sure that I should prevent the stockholders from looking into the books. They ought not to be forced to make a jump in the dark, but I would like to ask the Receiver whether he objects to hostile people inspecting the books."

THE RECEIVER'S OBJECTIONS.

Receiver Hardin, who had all this time during Mr. Keasbey's speech, been nursing his wrath to keep it warm, broke down Mr. Keasbey's chain of reasoning by saying that there were not any contracts signed between the North American and United States Companies, and then proceeded to score Mr. Stern, the "ten share stock owner," as he called him. Mr. Hardin contended that the petitioners simply want to go on a foraging excursion through the books of the North American Phonograph to collect facts to be used by the Edison United Co. in its litigation with the American Company. If, he said, Mr. Stern would indicate what facts he wanted, he, the Receiver, would willingly furnish them; but no opening of books at this stage.

Mr. R. Wayne Parker supported Mr. Hardin in his objection to Mr. Keasbey's clients rummaging through the books to collect points to use against the North American Company.

"I think," said Chancellor McGill, "that if the petitioners will, by Monday next, put their questions in writing and send them to Mr. Hardin, I shall direct him to prepare a balance sheet. I won't dispose of the bid question until the stockholders know something of the state of the company's affairs."

NEWS (JERSEY CITY)

4/17/95

THE RECEIVER'S BOOKS.

Shareholders Wished to Inspect Them, But the Receiver Objected.

A. Q. Keasbey, of Newark, representing Mr. Stearn, of New York, who is a stockholder in the North American Phonograph Company, applied to Chancellor McGill this morning to allow his client to see the books of Mr. J. R. Hardin, receiver for the phonograph company. The application was made pursuant to a request by the receiver that a bid for \$125,000 for the remaining assets of the company might be accepted. The company has \$465,000 in debts outstanding and its assets amount to \$125,000 in patents and \$25,000 in cash. The bid of \$125,000 was offered by Thomas A. Edison. The chancellor decided to postpone decision concerning the acceptance of the bid until April 29, and then listened to arguments by the receiver and his counsel and the stockholders and their counsel as to whether or not the stockholders should be allowed to inspect the books. About 2,000 or 3,000 shares in the company were represented and the shareholders claimed it was necessary for their own protection that they should have the privilege of inspecting the books. Mr. Stearn and his counsel, R. Wayne Parker, of Newark, claimed that the request for an inspection was made in the interest of the party that had offered the \$125,000 bid. Chancellor McGill ruled that the receiver should answer any specific questions that the stockholders might wish to ask him, and on next Monday should present a balance sheet containing the questions asked. The books will remain in the possession of the receiver.

JOURNAL (JERSEY CITY)

4/17/95

19 2 In 23
Chaucery 3
New Jersey

In the Matter of the
North American
Photograph Co.

Objections and Petition of
Charles A. Boston

Relief 108
affidavit

Charles A. Boston
in proper person
179 Prospect St.
East Orange
N.J.

This April 15th 1895

Allan McDonald

CH

Exhib. 35 - 404

In the Matter of the)
(
North Am. Phon. Co.)

And now comes CHARLES A. BOSTON, in his proper person, a citizen of New Jersey, resident in East Orange, in the said State, and an attorney ^{and Counselor} at law practising in the Courts of the State of New York and of the State of Maryland and a stockholder of the North American Phonograph Company, and desires to be heard in opposition to the recommendation of John R. Hardin, Receiver of the North American Phonograph Company, that said Receiver be empowered to accept the offer of Thomas A. Edison to purchase the entire assets of the said Company not heretofore disposed of or realized on by the Receiver and to convey said property to said Edison, and shows cause why said offer should not be accepted, for the following reasons:

I:- The said Charles A. Boston on or about the twelfth day of February, 1890, became for value the holder of twenty-six shares of full paid capital stock of the North American Phonograph Company of the par value of one hundred dollars each, evidenced by a certificate of stock of said Company numbered 275, which he offers to produce when required; and he has since continuously remained a holder of said stock and is now a holder thereof.

II:- The said Boston was induced to purchase the said stock by a circular letter dated January 20, 1890, issued

from the office of said Company, 160-164 Broadway in the City of New York, and signed by Jesse H. Lippincott, as President of the said Company, a copy of which is hereunto annexed marked C. A. B's, Exhibit "1", to which the said Boston refers for the statements thereof in detail and the original of which he will produce when required.

III:- The circular letter aforesaid states among other averments with reference to the said Company, that "It acquired by purchase ownership for the United States and Canada of all of Mr. Thomas A. Edison's patents on the Phonograph, and the exclusive agency from the sole licensee of the American Graphophone Company, controlling the patent in the United States of Charles Sumner ~~Bulter~~ ^{Tainter}, Chichester A. Bell and Alexander Graham Bell on the Graphophone. By uniting the affairs of both the Phonograph and Graphophone under one management, all patent litigation has been avoided and the Company has secured to itself the sole and exclusive right to furnish machines capable of receiving and reproducing the human voice and other sounds."

The said Circular further states that "In accordance with a contract made between this Company and Mr. Edison, he is to devote a portion of his time during the life of the patents to the further development of the Phonograph. All improvements made are to accrue to the benefit and will become the property of this Company. The Company will also receive the benefit of any improvements in the Graphophone made by any experts in the employ of the American Graphophone Company".

The letter aforesaid further stated that "In the formation of these sub-Companies the North American Phonograph Company received in cash "\$828,267, and is to receive a further sum of \$283,733 in payment for exclusive licenses in the respective territories granted to the various sub-companies, running five years, and in addition, received or is to receive from trustees who now hold the securities for the benefit of this Company \$1,400,000. of the stock of the sub-Companies. In addition to this, there has been or will be deposited with the Central Trust Company, Trustee, to be delivered to the North American Phonograph Company at the end of five years, stock in the various local Companies to the amount of \$4,100,000."

The letter aforesaid further stated that 6,000 shares of the stock of the Company had been put into the hands of Trustees for the future use and benefit of the Company if needed.

The letter aforesaid further stated that the income from rentals and profits on supplies would be practically net profit, and applicable to dividends, the only charges against it being the running expenses of the North American Company, which are practically covered by a few salaried officers, office rent, clerical hire, and from three to five traveling men going around among the different sub-companies.

The letter aforesaid further stated the resources and liabilities of the Company as follows:

(4)

RESOURCES.

Invested permanently in machines	\$253,001.55
Cash	50,725.39
Call loans, secured by collateral	225,775.73
Advanced to manufacturers over and above merchandise delivered	65,572.82
Book accounts	19,059.20
Due from sub-companies organized and under contract	168,733.57
Due from Companies under process of organization	<u>100,000.00</u>
	\$883,868.26

LIABILITIES.

Merchandise	\$ 4,232.90
Balance	<u>879,635.36</u>
	\$883,868.26

The letter aforesaid further stated: "There are no other outstanding liabilities of the Company except on a manufacturing contract, which is limited to \$106,500, and will be offset by delivery of machines".

The said Boston charges on information and belief that Thomas A. Edison was cognizant of the statements of the foregoing letter and permitted the same to be issued without contradiction or objection.

And the said Boston avers on information and belief that the representations of fact as to the resources and assets of the said Company in the letter aforesaid were true on January 20th, 1890, and they were verified by Messrs. Spencer, Trask & Co. in a letter to the public dated *issued on or about February 1st 1890* which said Boston will produce when required.

IV: The said Boston charges on information and belief that the patents ^{*referred to*} in the circular letter aforesaid have not expired and that therefore all improvements heretofore made by the said Edison should have properly accrued to the benefit of and should have become the property of the North American Phonograph Company.

V:- The said Boston further charges that the said Edison has heretofore made improvements in the phonograph, whereby it can be used in connection with an invention of the said Edison, styled the Kinetoscope, and whereby the value of the rights of the Company if properly and adequately enforced against the said Edison would be

greatly increased: and that an advertisement to the effect that this combination is about to be made is circulating with the knowledge and consent of the said Edison, a copy of which is hereto annexed marked C. A. B. Exhibit "2" and which will be more fully adverted to hereinafter, and the said Boston charges that if the offer of the said Edison is accepted and the recommendation of the Receiver adopted, the rights of the Company in this respect against the said Edison will be wholly extinguished.

VI:- The said Boston further charges that it appears from the bill of complaint of Walter Cutting, Executor of Robert L. Cutting and James ~~Semel~~ ^{Raunt} against The North American Phonograph Company and the accompanying papers, including an affidavit, of said Edison, upon which the said Receiver was appointed, to which the said Boston begs leave to refer for the contents thereof in detail, that the North American Phonograph Company did not acquire directly the ownership for the U. S. & Canada of all of Thos. A. Edison's patents on the Phonograph, but that it acquired from Thomas A. Edison by purchase ^{through} an intermediary 11850 shares out of a total number of 12000 shares of the capital stock of the Edison Phonograph Company of the par value of \$100 each and that the said Edison was paid an agreed price of \$500,000 by said intermediary therefor; and that said Edison Phonograph Company owned the phonograph patents aforesaid.

shares of stock of the Edison Phonograph Company and the prospective value of improvements in the phonograph and of the said Edison's contracts with the North American Phonograph Co. do not appear in the statement of resources referred to in the IIIrd. paragraph hereof; and that said statement of resources represents a balance of resources of said Company existing or payable in cash money of \$626,633.81 against existing liabilities of \$106,500 for machines to be delivered to the Company.

VIII:- The said Boston further avers that it appears from the bill of complaint herein and the affidavits accompanying it that the Edison Phonograph works acquired by contract with the North American Phonograph Co. the sole right to manufacture phonographs for the North American Phonograph Company; and the statement of the circular letter aforesaid shows that the liability of the North American Phonograph Company on a manufacturing contract for machines to be delivered was \$106,500. *And that already \$65,572.81 had been advanced to the manufacturer for machines yet to be delivered.*

The said Boston therefore charges that no additional outlay for the manufacture of machines became necessary or was possible on the 20th of January, 1890, for a long while then to come; and that all other legitimate outlays of the North American Phonograph Company must of necessity have been small,

ing the same as aforesaid show that for three years prior to August 16th, 1894, that is to say, since August 16th, 1891, no machines were made by or for the said Company; from which it follows that all expenditures made or incurred by the North American Phonograph Company for the manufacture of machines must have been made or incurred between January 20, 1890 and August 16, 1891 and subsequent to the delivery after January 20th, 1890 of machines of the cost value of ~~\$100,500~~. ^{172.072.82}

Charge that the Reasonable Expenses

X:- The said Boston of the North American Phonograph Company were necessarily as stated in the circular letter aforesaid only for a few salaried officers, office rent, clerical hire and a few travelling men.

XI:- The bill of complaint and the affidavits therewith as aforesaid charge and allege that all of the stock on hand at the time of filing the bill was not worth more than \$25,000 and that the sales of machines did not pay running expenses.

XII:- It appears, therefore, that between January 20th, 1890, and August 16th, 1894 while the North American Phonograph Company had no expensive plant and was under contract with the Edison Phonograph works that the latter should deliver to it machines of the cost value of ~~\$100,500~~ ^{172.072.8} and all other machines, if any, which it might use, none of which however were manufactured after August 16th, 1891 and while the North American Phonograph Company was making

sapes of machines ¹unsufficient to pay ordinary running expenses, the person or persons having the management of its corporate affairs parted with all of its resources of \$879,635.36 except stock valued at \$25,000 and incurred additional debts of enormous amount which will be more fully adverted to hereinafter.

XIII:- And the said Boston charges that the facts above set forth require and demand a full and complete explanation from all persons connected with the management of the said Company, in order that this Honorable Court may in the conservation of the interests of creditors and stockholders of the said Company be fully advised of the value and nature of all rights of action which the said Corporation may have against any and all persons, if any, implicated in unlawfully dissipating the assets and resources of the said Company, to the end that the rights of stockholders holding stock of the par value of six million and six hundred thousand dollars and of unsecured creditors shall not be sacrificed by a sale for a sum so grossly disproportionate thereto as the Receiver now recommends.

XIV:- The said Thomas A. Edison was elected a director of the North American Phonograph Company on *or about May 1. 1892* and remained a director thereafter until *January 1894* and so far as the said Boston is advised, he remains a director at this date; the said Edison was also elected the President of the Company on *or about May 1. 1892* and

remained President until in or about January 1894, when he attempted to resign the said office of President but the said Boston is informed and believes that his resignation was not accepted and that no other person has since held such office.

XV:- Notwithstanding the condition of the Company in January, 1890, and its immense supply of machines on hand and to be delivered representing in cost the sum of ~~\$425,074.37~~ ~~\$250,501.55~~ and notwithstanding that no machines were manufactured for the Company after Aug. 16th, 1891 and notwithstanding that there could have been no large legitimate expenses of said Company other than for the manufacture of machines, which latter expense said Boston charges was amply provided for by resources in excess of any demand for its machines which said Company has ever in its history had, the said Edison now claims that the said Company is in his debt to a vast extent, and the bill of complaint shows that the cash assets of the Company referred to in the statement of January 20, 1890, have been entirely dissipated.

XVI:- Notwithstanding the vast resources of the North American Phonograph Company on the 20th of January, 1890, as shown by the said circular letter, and the great quantity of machines in stock amounting to the cost value of \$253,001.55 and the great quantity of machines contracted for at that time and undelivered amounting to the cost

172.072.82
 value of ~~\$100,000~~ the bill of complaint shows that in or
 about May 1892, the Board of Directors of the corporation
 of which the said Boston charges *on information before* that the said Edison was
 one, authorized the issue of \$300,000 of mortgage bonds
 bearing 6% interest, and the bill of complaint further
 shows that the said Edison is now the owner of 220 of said
 bonds of the face value of \$220,000.

XVII:- The said Boston never authorized nor rati-
 fied the issue of the said bonds and he charges that their
 issue was not necessary for the uses of said corporation,
 and that in view of the facts herein before set forth their
 issue requires and demands a full and complete explanation
 from all persons connected ~~with~~ therewith and especially
 from the said Edison in order that this Honorable Court
 in the administration of this receiver-ship may be fully
 advised whether any consideration ever moved to the said
 corporation therefor and whether the said Edison as holder
 of 220 of the said bonds is not accountable to the said
 corporation as trustee for the said bonds held by him and
 for the proceeds of any of the said issue of 300 bonds
 which he may have disposed of.

XVIII:- The said Boston charges that in accepting
 the offer of the said Edison and adopting the recommenda-
 tion of the receiver without a through investigation of the
 said Edison's connection with the issue and ownership of
 the said bonds, this Hon
 orable Court will jeopardize and ma

extinguish all rights of action of the said Company against the said Edison and others associated with him in the management of the Company arising out of the said issue of bonds and the said Edison's trust relations with the Company

XIX:- The bill of complaint and the papers accompanying it further show that the said Edison, notwithstanding the vast resources of the Company as hereinabove fully set forth, claimed to have become a creditor of the Company for an additional sum unsecured of \$78518.37 and that while he was a director of the Company and as the said Boston believes still its President he procured from the Company its promising ⁵⁰⁷⁷ note for that sum and he procured as a pledge to him as security therefor the 11850 shares of the capital stock of the Edison Phonograph Company which he had previously sold for \$500,000 and the remaining 150 shares of the said Edison Phonograph Company, which the North American Phonograph Company had acquired from the holders.

XX:- The said 12000 shares of the capital stock of the Edison Phonograph Company constituted a large part of the property for which \$6,560,000 of the capital stock of the North American Phonograph was issued and was the most valuable part of the assets of the Company, and secured to the Company the Phonograph rights which were the basis of its business and its reason for existence.

XXI:- The said Boston charges that the pledge of the said shares to the said Edison was in effect an unlawful and unwarranted disposition of the property of the said corporation calculated to deprive it of its power to do business in the channels for which it was incorporated, and that the said Edison had full notice thereof.

XXII:- The said Edison being by reason of his fiduciary position as director of the Company charged with the duty of obtaining the highest possible price for the assets of the Company in case of a lawful sale thereof, and with full knowledge of the value thereof, and that he had himself previously sold a portion of said pledged property for \$500,000 and that it had thereafter been conveyed to the said Company for a large part of \$6,560,000 and that it constituted the most valuable franchise and property of the said Company, and that its fame was world wide, instead of advertising such sale as its importance demanded inserted the following advertisement in the Evening Journal, a newspaper published in Jersey City no more than 6 days beginning with 6th day of August, 1894.

"SALE OF STOCK.

The ^{ber}subscription will sell at public auction at the Court House in Jersey City, New Jersey on Monday, August 13th, 1894 at ten o'clock in the forenoon 12000 shares of the capital stock of the Edison Phonograph Company, held by him as collateral security.

T.A. Edison".

XXIII:- The said Boston charges that the said advertisement was grossly inadequate and insufficient in detail and was designed to comply with strict legal requirements and at the same time to awaken very little public interest and was a gross neglect of the said Edison's fiduciary duty in the premises.

XXIV:- The said sale was advertised to be made on August 13th, 1894, only three days before the bill of complaint herein was filed at the instance and with the cooperation of said Edison.

XXV:- The said Boston charges that it was the duty of the said Edison occupying the fiduciary position aforesaid and contemplating the application for a receiver of the corporate property, to be made at his instance and with his cooperation, to postpone the said sale, to the end that the receiver to be appointed might conserve the interests ^{of} to all concerned, and might take steps to protect such a valuable asset of the Company.

XXVI:- It appears from the Evening Journal aforesaid of Monday, August 13th, 1894, in the following item that the said Edison purchased at the said sale the said collateral security:

"Thomas Alva Edison, the inventor, at the Court house this morning, bought 12000 shares in the Phonograph Co's stock for \$10000. It was a mere formality. The papers in the transaction were placed on record in the County

purchased the said property at the said sale is true:

XXVII And the said Boston charges that the price realized at said sale was grossly inadequate and greatly detrimental to the interests of the Company and rendered the hopeless insolvency of the Company inevitable if it should be confirmed.

XXVIII And the said Boston charges that the said Edison upon said purchase became trustee of the said property for the said Company and accountable to the Company therefor

XXIX And the said Boston charges that in accepting the offer of the said Edison and adopting the recommendation of the receiver this Honorable Court will jeopardize and may extinguish all rights of action of the said Company against said Edison as purchaser of the property aforesaid and as trustee thereof for the said Company.

XXX. The said Boston further charges that the said Edison Phonograph Works as hereinbefore set forth secured the sole right to manufacture machines for the Company; that the statement of resources hereinbefore set forth shows provision made in January 20th, 1890 for machines of the cost price of ~~three~~ ^{four} hundred and ~~fifty~~ ^{twenty four} thousand ~~five hundred and one~~ ^{thirty four} dollars and ~~fifty~~ ^{thirty seven} cents and ample resources in excess thereof for all reasonable demands upon the said Company; that notwithstanding such provision and notwithstanding the fact alleged in the bill of complaint that no machines have been made for the Company since August 16, 1891, and that the sales of machines did not pay running expenses and that the stock of machines on hand on August 16, 1894 was not worth

more than Twenty-five thousand dollars, the said Edison Phonograph Works figures in the bill of complaint as a creditor of the Company to the extent of Thirty-six thousand dollars.

XXXI. The said Boston further charges on information and belief that the said Thomas A. Edison is and ever has been largely interested in the Edison Phonograph Works ^{and was and is its president} and that the contract to manufacture machines as aforesaid was in its practical effects a contract with the said Edison;

XXXII. The said Boston further charges upon information and belief that the said contract with the Edison Phonograph Works was highly detrimental to the North American Phonograph Company and that prices far in excess of reasonable rates were exacted from the Company thereunder; and that a cause of action exists in favor of the North American Phonograph Company by reason of said Edison's connection with both companies for a rescission of the said contract and an accounting between the said Company and the said Works and for the payment by the said Works to the said Company of any balance found to be due to the said Company by the said Works in excess of the actual value of the machines manufactured and delivered by the said Works to the said Company.

XXXIII. And the said Boston charges that in accepting the offer of the said Edison and adopting the recommendation of the receiver this Honorable Court will jeopardize and may extinguish all rights of action of the said Company against said Edison Phonograph Works and said Edison arising out of the said alleged contract and the payments

thereunder.

XXXIV. And the said Boston charges that under the Presidency of said Edison and while he was a director of the North American Phonograph Company the Company was permitted to be so run that within four years and seven months after the statement in the circular letter hereinbefore set forth, during three years of which no machines were manufactured for the said Company, the said Company not only dissipated all of its cash resources but became indebted, according to the claim of the said Edison to said Edison for Two hundred and ninety-eight thousand dollars, viz: Two hundred and twenty thousand dollars upon the Company's bonds and for Seventy-eight thousand dollars upon the Company's promissory note, and unto the said Edison Phonograph Works Thirty-six thousand dollars for machines.

And the said Edison acquired at a forced sale for Ten thousand dollars the Company's entire rights in the Phonograph patents; while the only other bonded indebtedness of the Company was \$80,000, if legally binding; and the only other unsecured indebtedness of the Company did not exceed Twenty thousand dollars as alleged in the bill of complaint; and the said Boston charges that the foregoing facts demand and require that there should be a full and complete accounting between the said Edison and the Company upon the foregoing transactions and that he should be compelled to show how he acquired the foregoing property and claims against the Company and whether he acquired them for full value or whether by reason of his

fiduciary relation to the said Company he is not trustee of all of the said property for the Company.

XXXV. And the said Boston further charges that he is advised and believes that by reason of all of the matters hereinbefore set forth the said Edison is also liable in damages to the Company for his negligent management of the affairs committed to him as director and president of the Company.

XXXVI. And the said Boston charges that in accepting the offer of the said Edison and adopting the recommendation of the receiver this Honorable Court will jeopardize and may extinguish the rights of action indicated in the XXXIV and XXXV. paragraphs hereof.

XXXVII. The exhibit annexed hereto and hereinbefore referred to, and marked C.A.B. Exhibit #2, is a pamphlet sold in the City of New York entitled "History of the Kinetograph, Kinetoscope and Kinetograph - Phonograph" and bearing the indorsement and approval of Thomas A. Edison.

A letter therein from Thos. A. Edison contains these statements: "In the year 1887, the idea occurred to me that it was possible to devise an instrument which should do for the eye what the phonograph does for the ear and that by a combination of the two all motion and sound could be recorded and reproduced simultaneously." "The following article which gives an able and reliable account of the invention has my entire endorsement."

The said article on page 8 contains this statement: "The synchronous attachment of Photography with the Phonograph was early contemplated in order to record and

give back the impressions to the eye as well as to the ear and on page 13 it contains this statement:

"When a Phonograph record has been taken simultaneously with such a strip, the two are started together by the use of a simple but effective device and kept so all through, the phonographic record being in perfect accord with the strip."

And this statement: "The establishment of harmonious relations between Kinetograph and Phonograph was a harrowing task and would have broken the spirit of inventors less inured to hardships and discouragement than Edison's veterans."

On page 16 of said article is a graphic representation of the Kinetoscope and Phonograph.

On page 18 is the statement that "The inconceivable swiftness of the photographic successions and the exquisite synchronism of the phonographic attachment have removed the last trace of automatic action, and the illusion is complete."

On page 19 is the statement that: "The crowning point of realism was attained on the occasion of Mr. Edison's return from the Paris Exposition of 1889, when Mr. Dickson himself stepped out on the screen raised his hat and smiled, while uttering the words of greeting 'Good morning, Mr. Edison, glad to see you back I hope you are satisfied with the Kineto-Phonograph.' "

On page 50 is a foreshadowing of the possibilities of the combined phonograph and Kinetoscope as follows:

"To the final development of the kinetographic stage, than which no more powerful factor for good exists

no limitations can possibly be affixed. The shadowy histrionics of the near future will yield nothing in realistic force and beauty to their material sisters. No imperfections will mar the illusion. The rich strain of a Seidl or Damrosch orchestra, issuing from a concealed phonograph, will herald the impending drama, and attune the hearts of the expectant throng. The curtain will rise, exposing some one of the innumerable phrases of pictorial art, some soft English pastoral or cosy interior of a mansion, some fastness in the Alps or Himalayas, some tempestuous ocean scene, quickened with the turbulent anguish of the unresting sea, some exquisite landscape, steeped in the jeweled lights of sunset or the roseate sheen of morn. The actors will enter singly and in groups, in the graceful interweaving of social life, the swirl of the dance or the changeful kaleidoscope of popular tumult. The tones will be instinct with melody, pathos, mirth, command, every subtle intonation which goes to make up the sum of vocalism; the clang of arms, the sharp discharge of artillery, the roll of thunder, the boom of ocean surges, the chant of the storm wind, the sound of Andalusian serenades and the triumphant burst of martial music,- all these effects of sight and sound will be embraced in the kinetoscopic drama, and yet of that living, breathing, moving throng, not one will be encased in a material frame. A Company of ghosts, playing to spectral music. So may the luminous larvae of the Elysian Fields have rehearsed earth's well-beloved scenes to the exiled senses of Pluto's Queen.

(21)
And on page 52 is the following:

"What is the future of the kinetograph? Ask rather, from what conceivable phrase of the future it can be debarred. In the promotion of business interests, in the advancement of science, in the revelation of unguessed worlds, in its educational and re-creative powers, and in its ability to immortalize our fleeting but beloved associations, the kinetograph stands foremost among the creations of modern inventive genius. It is the crown and flower of nineteenth century magic, the crystalization of Eons of groping enchantments. In its wholesome, sunny and accessible laws are possibilities undreamt of by the occult lore of the East; the conservative wisdom of Egypt, the jealous erudition of Babylon, the guarded mysteries of Delphic and Eleusinian shrines. It is the earnest of the coming age, when the great potentialities of life shall no longer be in the keeping of cloister and college, sword or money bag, but shall overflow to the nethermost portions of the earth at the command of the humblest heir of the divine intelligence."

XXXVIII. And the said Boston charges that the foregoing statements quoted from Exhibit #2 and indorsed by the said Edison, ^{show} that the said Edison has contemplated the combination of the kinetoscope and phonograph since 1887; that while he was a director and the president of the North American Phonograph Company he and his employees and assistants were working to that end;

and the said Boston further charges that under the facts represented in the circular letter hereinbefore referred to the North American Phonograph Company was and

is entitled to the benefit of the improvements aforesaid made by the said Edison;

and the said Boston further charges that the conduct of the said Edison as hereinbefore set forth was dictated by his individual interest as opposed to the interests of the North American Phonograph Company, and that in view of the foregoing facts the whole of the transactions of the said Edison as hereinbefore set forth have been designed to secure to the said Edison the control of the phonograph patents for the purpose of making the combination only recently disclosed to the public in the pamphlet aforesaid, Exhibit #2, which was copyrighted and published during the present year 1895.

And the said Boston further charges that in the manner hereinbefore set forth the said Edison has converted to his own use valuable property of the North American Phonograph Company and that a cause of action therefor exists against the said Edison.

XXXIX. And the said Boston further charges that in accepting the offer of the said Edison and adopting the recommendation of the receiver this Honorable Court will extinguish the rights of the said Company indicated in XXXVII and XXXVIII paragraphs hereof.

XI. The said Boston shows in connection with the foregoing facts that in the month of August, 1894, in addition to selling to himself all of the stock of the Edison Phonograph Company and assisting in the application for a receiver for the North American Phonograph Company the said Edison also began other suits in this Honorable Court for the appointment of a receiver for one or more

other corporations having or claiming to have rights in the phonograph, and the said Boston asks leave to refer to the records of this Court to sustain his allegations in this particular.

XLI. The said Boston further shows that another of the valuable assets formerly owned by the North American Phonograph Company was the exclusive agency for the sole licensee of the American Graphophone Company controlling the patents in the United States of Charles Sumner Tainter, Chester A. Bell and Alexander Graham Bell on the Graphophone and the right ~~to~~ the benefit of any improvements in the Graphophone made by any experts in the employ of the American Graphophone Company; that under the presidency and directorate of the said Edison in the North American Phonograph Company the rights of the North American Phonograph Company ⁱⁿ ~~and~~ the Graphophone were permitted to be brought into dispute by the non-payment of royalties, and that ultimately the American Graphophone Company repudiated the claims of the North American Phonograph Company to rights under the Graphophone patents;

that for sometime prior to the appointment of a receiver for the North American Phonograph Company the Company had sold phonographs outright to users;

that after the appointment of the said receiver the American Phonograph Company sent a circular letter to such users of the phonograph, a copy of which is hereto annexed marked C.A.B. Exhibit #3;

that said notice was calculated to perplex users of phonographs, and greatly complicated the prospect of rehabilitating the North American Phonograph Company and enforcing its rights;

that said Boston is unable to account for the knowledge on the part of the graphophone Company of the names of the users of the phonograph, unless they were furnished by some one formerly connected with the North American Phonograph Company with the design to cripple and prevent the rehabilitation of said Company by the stockholders;

that while the circular letter last mentioned states that suit against the North American Phonograph Company was begun and was being vigorously pressed up to the time of the bankruptcy of the North American Phonograph Company, it nowhere appears in the bill of complaint herein or the accompanying affidavits, as nearly as said Boston remembers, that such an important suit is pending, through the statement is made that the rights ⁱⁿ ~~of~~ the Graphophone are disputed;

that in the light of all of the other facts hereinbefore set forth such omission is worthy of note, as having kept such interested persons as examined the said papers in ignorance of the pendency of such a vital proceeding calculated to prevent any resumption of business by the North American Phonograph Company.

XLII. And the said Boston insists that the foregoing statement of facts demands the very closest scrutiny and the fullest explanation from the said Edison before he shall be permitted to buy any of the property or assets of the North American Phonograph Company at any price.

XLIII. And the said Boston further shows that

in the collection of the facts hereinbefore set forth he has labored under difficulties because of the nature of the inquiry necessary to elicit them;

that on the 14th day of September 1894 said Boston in an endeavor to ascertain the rights of the Company and of its stockholders addressed to the receiver herein a letter a copy of which is hereunto annexed marked C.A.E. Exhibit #4;

that thereafter he received two replies thereto, copies of which are hereunto annexed marked respectively C.A.E. Exhibits #5 and #6;

that thereafter his, (Boston's) attorney, William Woodward Baldwin visited said receiver at his office in Newark, and had several communications with him by telephone in which said Baldwin failed to procure the information asked for in said letter although he requested and was promised the same;

that thereafter the said receiver furnished said Boston with a copy of the list of stockholders of said Company but he has failed utterly to furnish him with any of the other information demanded in said Boston's letter of September 14th and promised in said receiver's letter of September 17, 1894; that upon receipt of the notice herein to show cause on April 8th why the said offer and recommendation should not be approved, said Boston found himself unable by reason of other pressing business to appear in answer thereto, but he now acts with all practicable speed. *He refers also to the Supplemenatary Statement hereto annexed.* WHEREFORE he prays that his objections may be considered; that the said offer and recommendation be held under consideration pending the investigation herein.

prayed for; that the said receiver be directed to furnish to said Boston or to this court on or before a day to be fixed full and complete answers ^{to} ~~of~~ the questions propounded to the receiver by the ~~said~~ ^{said} Boston on September 14, 1894;

that said receiver be directed to permit said Boston or his accredited representative to inspect at all times reasonable, all books, papers, documents, accounts, contracts and other property in his custody or control bearing on the matters in these objections set forth;

that said Edison be directed to appear before the Chancellor at a time and place to be designated, to be interrogated concerning the matters outlined in the foregoing objections;

that the said Edison be enjoined until further action of the Chancellor from disposing of any part of the property now or formerly belonging to the North American Phonograph Company;

that the receiver and all parties to this action be directed to serve notice of all proceedings in this action hereafter taken by them upon Charles A. Boston, ^{at upon his counsel George Leonard} 179 Prospect Street, East Orange, New Jersey, and that on the day to which this hearing is adjourned, the said Boston be afforded such further relief in the premises as may be just and proper and in accordance with the usual practice of this court.

George Leonard
Counsel with

As in duty &c.
Charles A. Boston
In proper person.

State of New Jersey
County of Hudson - Correl

Whereby certify that on this 15th day of April
1895 before me the subscriber a Minister in
Churches of New Jersey ~~resident in Hudson~~
County, personally appeared in Jersey City in said
County, Charles A. Boston, to me known, and known
to me to be the person described in and who executed
the foregoing instrument and acknowledged that he
executed the same;

And the said Boston being by me duly sworn
deposed and said that he had made the foregoing
instrument and knew the contents thereof, and that the
statements of fact therein contained were true
of his own knowledge, except those statements
therein alleged to be made on information and
belief, and as to those statements, he believes them
to be true.

In witness whereof I have hereunto affixed
my Signature _____ at Jersey City,
aforesaid this 15th day of April 1895

[Signature]
Minister

In Chancery of New Jersey

In the matter of the
North American
Photograph Company

} Supplementary
Affidavit of
Charles A. Boston

State of New Jersey
County of Hudson - to-wit

Charles A. Boston being duly sworn
deposes and says that he has been a stockholder
of record of the North American Photograph
Company since February 12th 1890; that as
such he has corresponded with the Receiver
as shown by the Exhibits #4, 5 & 6 hereto annexed;
that said Receiver knew him to be a stockholder,
knew his address, and knew him to be interested
in protecting the rights of the stockholders
and creditors of said Company, prior to the 1st
of January 1895; that said Boston is informed
that the Receiver was directed to notify stockholders
of his intention to sell the remaining assets,
in February last; that said Boston was not
notified and that his first knowledge of such
direction was acquired on April 13th 1895.
Sworn to before me }
April 13th 1895 } Charles A. Boston

THE NORTH AMERICAN PHONOGRAPH COMPANY,

160-164 Broadway, New York.

January 20, 1890.

Messrs. Spencer, Trask & Co.,

16-18 Broad Street, City:

Gentlemen:- In compliance with the request that I should give you full information in regard to the organization of the North American Phonograph Company, its history, condition and prospects, I respectfully submit the following:

This Company was organized in October, 1888. It acquired by purchase ownership for the United States and Canada of all of Mr. Thomas A. Edison's patents on the Phonograph, and the exclusive agency from the sole licensee of the American Graphophone Company, controlling the patents in the United States of Charles Sumner Tainter, Chichester A. Bell and Alexander Graham Bell on the Graphophone. By uniting the affairs of both the Phonograph and Graphophone under one management, all patent litigation has been avoided and the Company has secured to itself the sole and exclusive right to furnish machines capable of receiving and reproducing the human voice and other sounds.

In accordance with a contract made between this Company and Mr. Edison, he is to devote a portion of his time during the life of the patents to the further development of the Phonograph. All improvements made are to ac-

crue to the benefit of any improvements in the Graphophone made by any experts in the employ of the American Graphophone Company.

Immediately after the formation of this Company, steps were taken to organize sub-Companies throughout the United States. There are now thirty-two sub-Companies formed, with an aggregate capital of about \$20,000,000, practically covering the entire country. In the formation of these sub-Companies, the North American Phonograph Company received in cash \$28.267, and is to receive a further sum of \$283,733 in payment for exclusive licenses in the respective territories granted to the various sub-Companies, running five years, and, in addition, received, or is to receive from Trustees who now hold the securities for the benefit of this Company, \$1,400,000 of the stock of the sub-Companies. In addition to this, there has been or will be deposited with the Central Trust Company, Truste to be delivered to the North American Phonograph Company at the end of five years, stock in the various local Companies to the amount of \$4,100,000. For this the sub-Companies will receive an extension of their exclusive license for nearly ten years more.

The North American Phonograph Company owns all of the machines, and they are leased to the sub-Companies at a rental of \$20 a year for each one, and the sub-Companies in turn lease them at \$40 a year to the public, and are required to keep the machines in good order. In addition

to the rental, the terms of the contract with the sub-Companies insures to the Parent Company a considerable profit in the furnishing of supplies necessary for the operation of the machines. The experience of this Company indicates that this may reach an average of \$10 a machine for each year.

Though this Company was organized in October, 1888 and the formation of some of the local Companies quickly followed, the first small installment of machines was not ready to be put upon the market until May, 1889. While these original machines accomplished all that had been promised of them, and were substantially the same as those shown and used in the formation of the sub-Companies, a practical trial at the hands of commercial subscribers suggested the desirability of certain improvements, particularly in the direction of greater simplicity of mechanism in order to attain at once the greatest ease of manipulation and the widest and most popular use.

Mr. Edison, upon his return from Europe, in August last, practically reconstructed the Phonograph, greatly simplifying it. The Graphophone Company also made valuable improvements, but pending these changes in the machines the local Companies generally relaxed their efforts for new subscribers.

The output of new machines and their exchange for the originals was not begun until November last, so that the local Companies have had for about only ninety days a machine to offer to the public, which, in addition to accu-

ately recording and reproducing speech, has the simplicity and durability which, according to the testimony of those who use this labor-saving device in their daily business, make it entirely practical.

The number of machines outstanding now is 6,275. At the present time we are delivering to the sub-Companies, machines at the rate of sixty a day. If no greater ratio of machines are distributed during the balance of 1890 than have been distributed since May, 1889, we will have outstanding and under rental January 1, 1891, in the neighborhood of 17,000 machines. Our estimate, however, is that with the improved machines, and the growing interest in the business all over the United States and the well-understood fact that every machine in successful use creates a demand for others, by the 1st of January, 1891, there will be in actual use in this country from 26,000 to 30,000 machines. The more-recently organized Companies are meeting with better success than the older ones; this is accounted for by the fact that they have had to do with the improved simple machine. To illustrate, the Texas Phonograph Company, which did not commence business until November last, has, nevertheless, since that time had shipped to them over 300 machines, that they assure us are going under rental as rapidly as received.

Competent mechanics are of the opinion that the present Phonograph and Phonograph-Graphophone are so perfect in their construction that with slight repairs and proper

attention they can be used for fifteen years or more.

It is expected that this Company will realize a handsome sum from the formation of the sub-Company in Canada.

By contract with the Edison Toy Manufacturing Company in Boston, this Company will receive a royalty of 25 per cent on the cost of all phonographic apparatus used in dolls, the minimum amount of which shall not in any year fall below \$10,000. The royalty received from this source will be divided, one-half remaining with the Parent Company, and the other half being distributed among the local Companies.

There are a number of new features independent of the practical or commercial use of the machine that will undoubtedly yield considerable revenue. Among these, Phonographs, for exhibition purposes, which are leased at \$25 per month. We have not as yet paid much attention to the amusement features, for the reason that we wished first to demonstrate the practical uses of the machines, and after that was fully established, we expected to develop other features in connection with them.

The North American Phonograph Company paid its first semi-annual dividend of 3 per cent in August 1899; a dividend will be declared at the same rate in the coming month, February. Looking at the business from the most

conservative standpoint, and saying that by the end of this year we have 17,000 machines under rental, it would still indicate that the continuance of the payment of the dividends was assured. The income from 17,000 machines in rentals and profits on supplies will be in round figures \$510,000. This sum would be practically net profit, and applicable to dividends, the only charges against it being the running expenses of the North American Company, which are practically covered by a few salaries officers, office rent, clerical hire, and from three to five traveling men going around among the different sub-Companies.

I submit the following financial statement;

The North American Phonograph Company is incorporated under the laws of the State of New Jersey, with a capital stock of \$6,600,000, divided into 66,000 shares, each of the par value of \$100, full paid, and non-assessable

For a consideration of 66,000 shares the Company acquired its patent rights, 6,000 shares of which have been put in the hands of trustees for the future use and benefit of the Company, if needed.

Besides the \$1,400,000 par value of local Companies' stock, either delivered to or held for the benefit of the Company and the \$5,000,000 additional stock of local Companies' ~~stock~~, either delivered or to be delivered in five years, and the Canadian Phonograph Patents, the available assets of the Company, are shown by the following:

R E S O U R C E S .

Invested permanently in machines	\$253,001.55
Cash	50,725.39
Call loans, secured by collateral	226,775.83
Advanced to manufacturers over and above merchandise delivered	65,572.82
Book accounts	19,059.20
Due from sub-Companies organized and un- der contract	168,733.57
Due from Companies under process of organization	100,000.00
	\$883,868.26

L I A B I L I T I E S .

Merchandise	\$ 4,232.90
Balance	879,635.36
	\$883,868.26

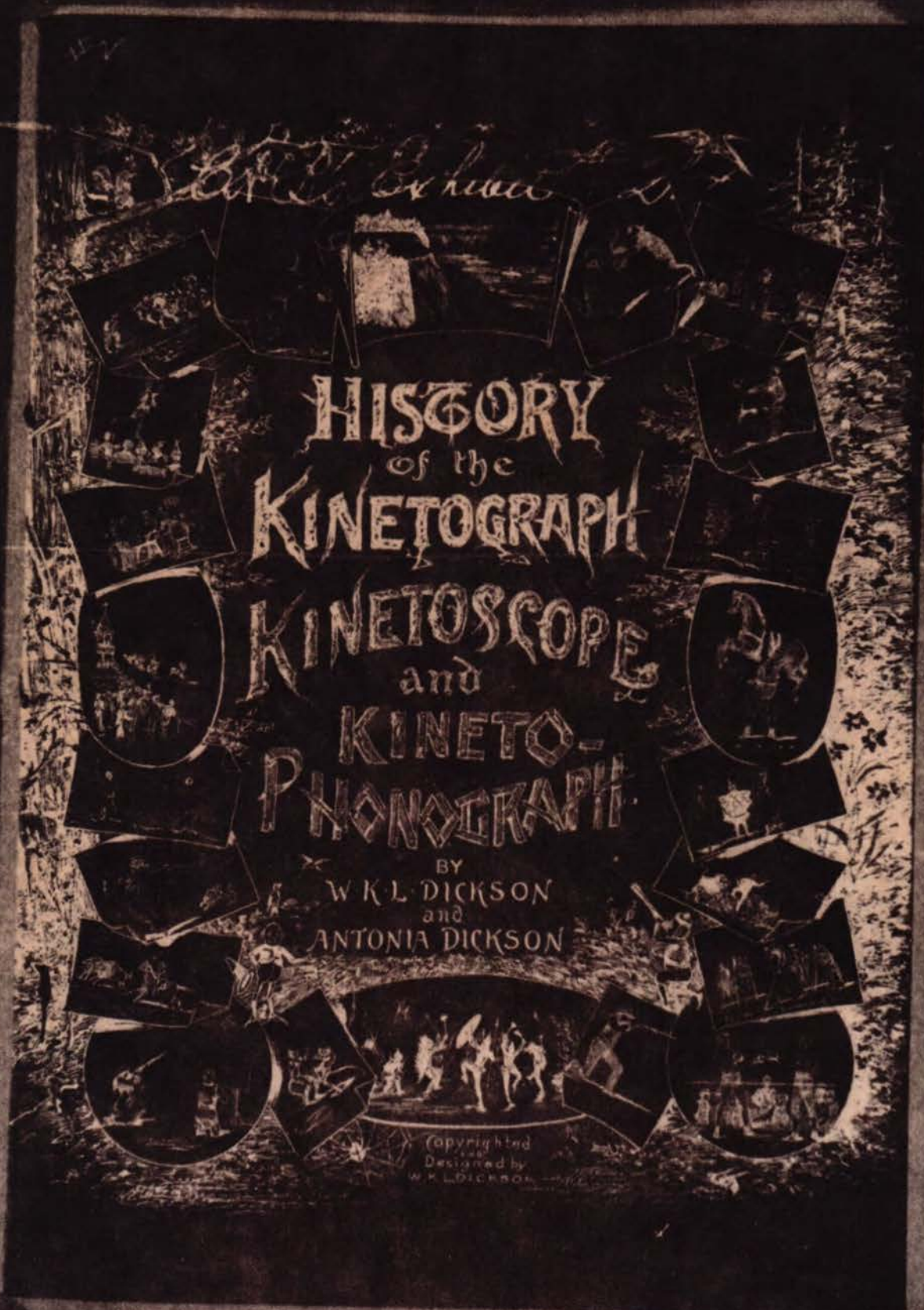
There are no other outstanding liabilities of this Company except on a manufacturing contract, which is limited to \$106,500 and will be offset by delivery of machines.

In view of the interest your friends will have through this subscription, I request that you name two members for the board of direction.

Very truly yours,

Jesse H. Lippincott,

President.

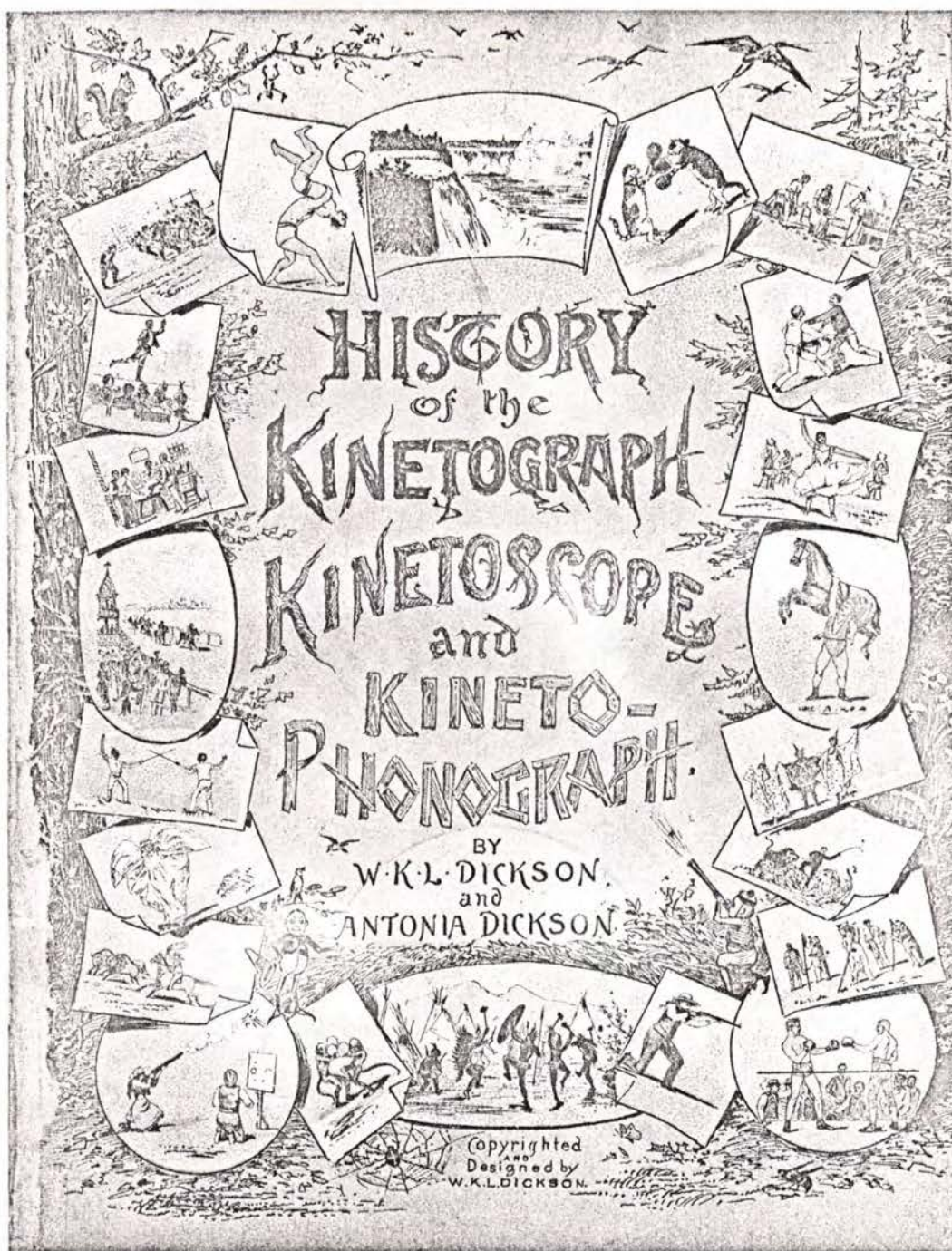


Early Exhibition

HISTORY
of the
KINETOGRAPH
KINETOSCOPE
and
KINETO-
PHOTOGRAPH

BY
W. K. L. DICKSON
and
ANTONIA DICKSON

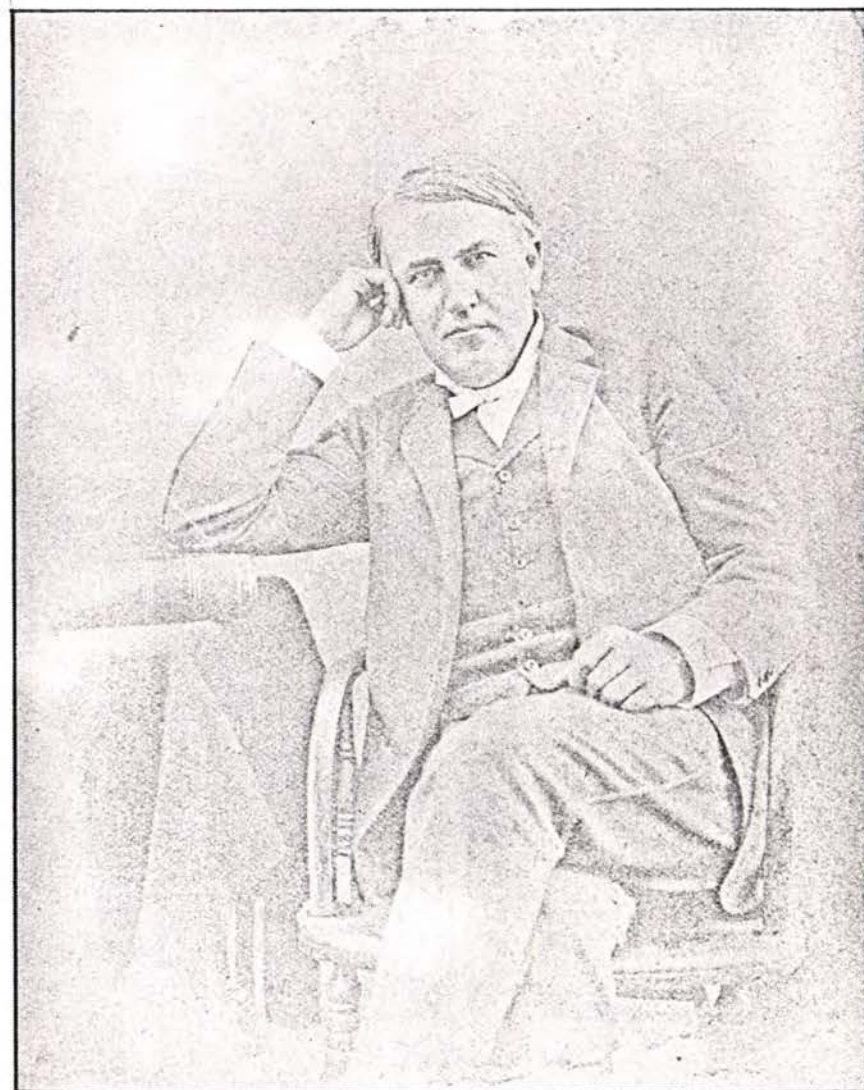
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70-25283



ALBERT BUNN,
IMPRIMATUR,
93 WORLD BUILDING, NEW YORK.



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THOMAS A. EDISON.

In the year 1887, the idea occurred to me that it was possible to devise an instrument which should do for the eye what the phonograph does for the ear, and that by a combination of the two, all motion and sound could be recorded and reproduced simultaneously. This idea, the germ of which came from the little toy called the Zoetrope, and the work of Muybridge, Maris, and others has now been accomplished, so that every change of facial expression can be recorded and reproduced life size. The Kinetoscope is only a small model illustrating the present stage of progress but with each succeeding month new possibilities are brought into view. I believe that in coming years by my own work and that of Dickson, Muybridge, Maris and others who will doubtlessly enter the field that grand opera can be given at the Metropolitan Opera House at New York without any material change from the original, and with artists and musicians long since dead. The following article which gives an able and reliable account of the invention has my entire endorsement. The authors are peculiarly well qualified for their task from a literary standpoint and the exceptional opportunities which Mr Dickson has had in the fruition of the work.

Thomas A. Edison



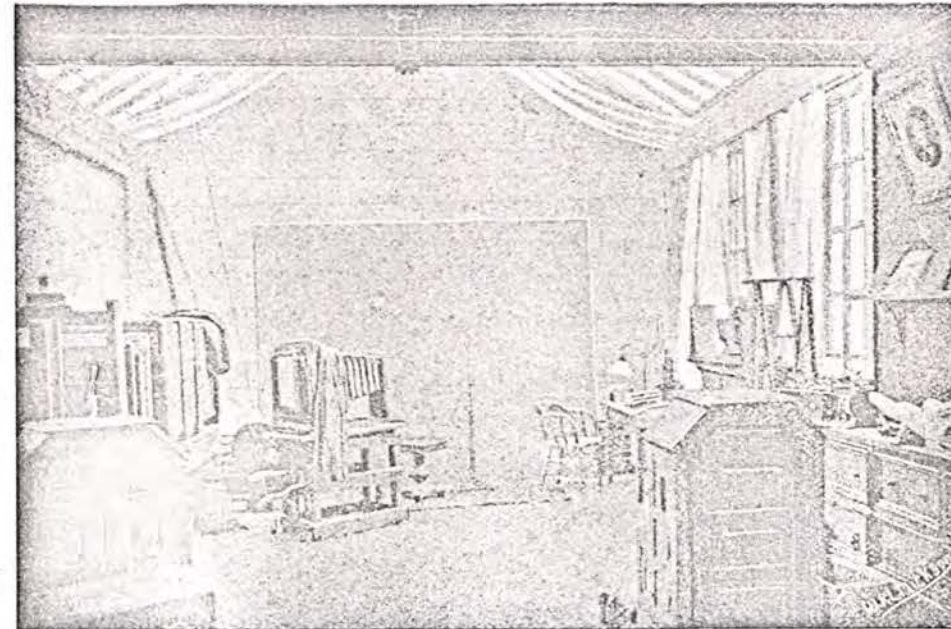
HISTORY OF THE INVENTION.



IN the year 1887, Mr. Edison found himself in possession of one of those breathing spells which relieve the tension of inventive thought. The great issues of electricity were satisfactorily under way. The incandescent light had received its finishing touches; telephonic and telegraphic devices were substantially interwoven with the fabric of international

life; the phonograph was established upon what seemed to be a solid financial and social basis, and the inventor felt at liberty to indulge in a few secondary flights of fancy. It was then that he was struck by the idea of reproducing to the eye the effect of motion by means of a swift and graded succession of pictures and of linking these photographic impressions with the phonograph in one combination so as to complete to both senses synchronously the record of a given scene. At the time of which we speak the conditions of photography were eminently favorable as a basis for experiments, while their obvious limitations afforded a tempting field for further research. The initial crudities of Daguerre, Niepce and their peers had been successfully tested and superseded, and the science was now enriched by the discoveries of Maddox, author of the bromo-gelatine process of instantaneous photography. The initial principle of moving images was suggested by a toy, familiar to children as the zoetrope, or wheel of life, a contrivance consisting of a cylinder some ten inches wide, open at the top, around the lower and interior rim of which a series of related pictures is placed, representing any given phase of life, susceptible of swift and continuous motion. The cylinder is then rapidly rotated, and the eye of the spectator, being directed to the

narrow and vertical slits on the outer surface of the cylinder, is edified by a series of painfully spasmodic jerks which by the exercise of a liberal fancy may pass as dimly suggestive of human and equine antics. This effect, as the reader probably knows, springs from the substitution of one succeeding phase of an attitude for another so as to produce the effect of continuity upon the retina, and the failure of these successive images to blend into an illusive picture is due to the roughness of the woodcuts and the



INTERIOR VIEW PHOTOGRAPHIC STUDIO.

impossibility of obtaining the requisite degree of speed. The idea, however, was a novel and ingenious one, and as such commended itself to the attention of photographic experts such as Mr. Muybridge and others, who, working upon the delicately responsive surface of the Maddox dry gelatine plate, were able to secure greatly superior results. Despite these important improvements, however, the system presented grave imperfections, and the limited speed attainable militated hopelessly against the

desired realism of effect. It was then that a series of experiments was entered upon at the Orange Laboratory, extending over a period of six years.

The synchronous attachment of photography with the phonograph was early contemplated in order to record and give back the impressions to the eye as well as to the ear. The comprehensive term for this invention is the kineto-phonograph. The dual taking machine is the phono-kinetograph, and the reproducing machine is the phono-kinetoscope, in contradistinction to the kinetograph and kinetoscope, which apply respectively to the taking and reproduction of movable but *soundless* objects.)

The initial experiments took the form of microscopic pin-point photographs, placed on a cylindrical shell, corresponding in size to the ordinary phonograph cylinder. These two cylinders were then placed side by side on a shaft, and the sound record was taken as near as possible synchronously with the photographic image, impressed on the sensitive surface of the shell. The photographic portion of the undertaking was seriously hampered by the materials at hand, which, however excellent in themselves, offered no substance sufficiently sensitive. How to secure clear-cut outlines, or indeed any outlines at all, together with phenomenal speed, was the problem which puzzled the experimenters. The Daguerre, albumen and kindred processes met the first requirements, but failed when subjected to the latter test. These methods were therefore regretfully abandoned, a certain precipitate of knowledge being retained, and a bold leap was made to the Maddox gelatine bromide of silver emulsion, with which the cylinders were coated. This process gave rise to a new and serious difficulty. The bromide of silver haloids, held in suspension with the emulsion, showed themselves in an exaggerated



PHOTOGRAPHY EXTRAORDINARY.

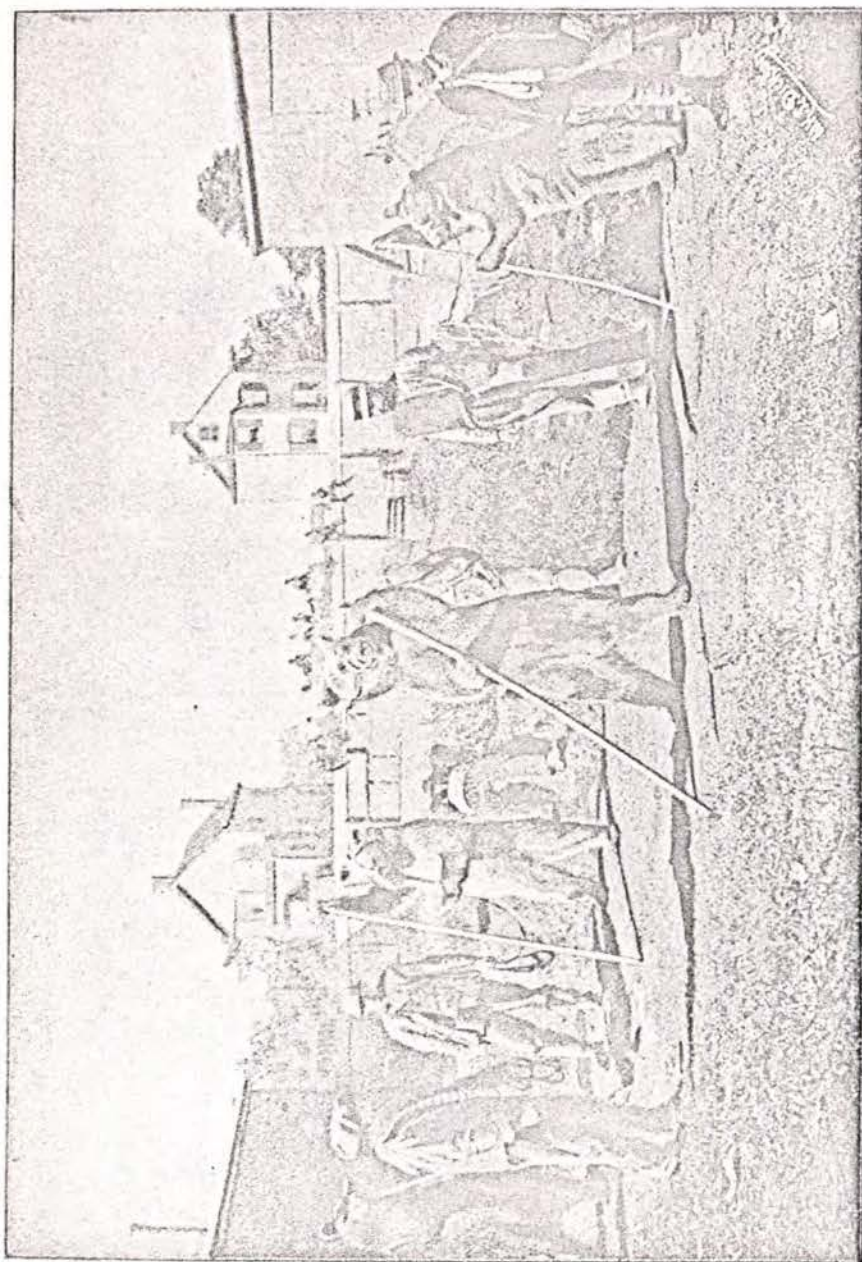
coarseness when it became a question of enlarging the pin-point photographs to the dignity of one-eighth of an inch, projecting them upon a screen, or viewing them through a binocular microscope. Each accession of size augmented the difficulty, and it was resolved to abandon that line of experiment and revolutionize the whole nature of the proceedings by discarding these small photographs and substituting a series of very much larger impressions, affixed to the outer edge of a swiftly rotating wheel or disk and supplied with a number of pins, so arranged as to project under the centre of each picture. On the rear of the disk, upon a stand, a Geissler tube was placed, connected with an induction coil, the primary wire of which; operated by the pins,



W. K. L. D.

AN EARLY KINETOGRAPHIC EXPERIMENT.

produced a rupture of the primary current, which, in its turn, through the medium of the secondary current, lighted up the Geissler tube at the precise moment when a picture crossed its range of view. This electrical discharge was performed in such an inap-



A BEAR PARTY

preciable fraction of time, the succession of pictures was so rapid and the whole mechanism so nearly perfect that the goal of the inventor seemed almost reached. "We needs must love the highest," however, an axiom which holds good in science as well as in character, and the methods still pointed to possible improvement.

Then followed some experiments with drums, over which sheets of sensitized celluloid film were drawn, the edges being pressed into a narrow slot in the surface, similar in construction to the old tinfoil phonograph.

A starting and stopping device was also applied, identical with the one used and in a later experiment explained in these pages. The pictures were then taken spirally to the number of two hundred or so, but were limited in size, owing to the rotundity of surface, which only brought the centre of the picture into focus. The sheet of celluloid was then developed, etc., and



"TEDDY"

placed upon a transparent drum, bristling at its outer edge with brass pins. When the drum was rapidly turned these came in contact with the primary current of an induction coil, and each image was lighted up in the same manner as described in the previous disk ex-



A GENTLEMAN IN WAITING.

W. K. L. D.

periment, with this difference only, that the *inside* of the drum was illuminated.



W. K. L. D.

The next step was the adoption of a highly sensitized strip of celluloid, one-half inch wide, but this proving unsatisfactory, owing to inadequate size, one-inch pictures were substituted on a band one and a half inches wide, the additional width being required for the perforations on the outer edge. These perforations occur at close and regular intervals, in order to enable the teeth of a locking device to hold the film steady for nine-tenths of the one-forty-sixth part of a second, when a shutter opens rapidly and admits a beam of light, causing an image or phase in the movement of the subject. The film is then jerked forward in the remaining one-tenth of the one-forty-sixth part of a second, and held at rest while the shutter has again made its round, admitting another circle of light, and so on until forty-six impressions are taken a second, or two thousand seven hundred and sixty a minute. This speed yields one hundred and sixty-five thousand six hundred pictures in an hour, an amount amply sufficient, when revolved before the eye, for an entertainment. In this connection it is interesting to note that were the spasmodic motions added up by themselves, exclusive of arrests, on the same principle that a train record is computed independently of stoppages, the incredible speed of twenty-six miles an hour would be shown.



HERTOLDI.

The advantage of this system over a continuous band, and of a slotted shutter forging widely ahead of the film would be this, that only the fractional degree of light comprised in the $\frac{1}{40}$ part of a second is allowed to penetrate to the film, at a complete sacrifice of all detail, whereas in the present system of stopping and starting each picture gets one-hundredth part of a second's exposure, with a lens but slightly stopped down, time amply sufficient, as any photographer knows, for the attainment of excellent detail, even in an ordinarily good light. Pre-eminently was this the case in using Messrs. Bausch and Lomb, and the Gundlach lenses, in which the opticians spared no skill or trouble in carrying out our specifications. It must be understood that but one camera is used for taking these strips, and not a battery of cameras. The next step after making the negative band is to form a positive or finished series of reproductions from the negative, which is passed through a machine for the purpose, in conjunction with a blank strip of film, which, after development and general treatment, is replaced in the kinetoscope or phono-kinetoscope, as the case may be. When a phonograph record has been taken simultaneously with such a strip, the two are started



HERTOLDI.

together by the use of a simple but effective device and kept so all through, the phonographic record being in perfect accord with the strip. In this conjunction, the tiny holes with which the edge of the celluloid film is perforated correspond exactly with the phonographic records, and the several devices of the camera, such as the shifting of the film and the operations of the shutter, are so regulated as to unify them with the different minutiae of sound recording, one motor serving as a source of common energy to camera and phonograph, when they are electrically and mechanically linked together.

The establishment of harmonious relations between kinetograph and phonograph was a harrowing task and would have broken the spirit of inventors less inured to hardship and discouragement than Edison's veterans. The principles of this



PHOTOGRAPHY EXTRAORDINARY.
W. K. L. DICKSON. TAKEN BY HIMSELF.

doughty band, however, are based upon the sentiments of the indomitable Frenchman, who, in acceding to his lady-love's deprecatory request, remarked, "Madame, if the thing were difficult it would already have been done; if it is impossible it SHALL be done." The experiments have borne their legitimate fruit, and the most scrupulous nicety of adjustment has been achieved, with the resultant effects of realistic life, audibly and visually expressed.

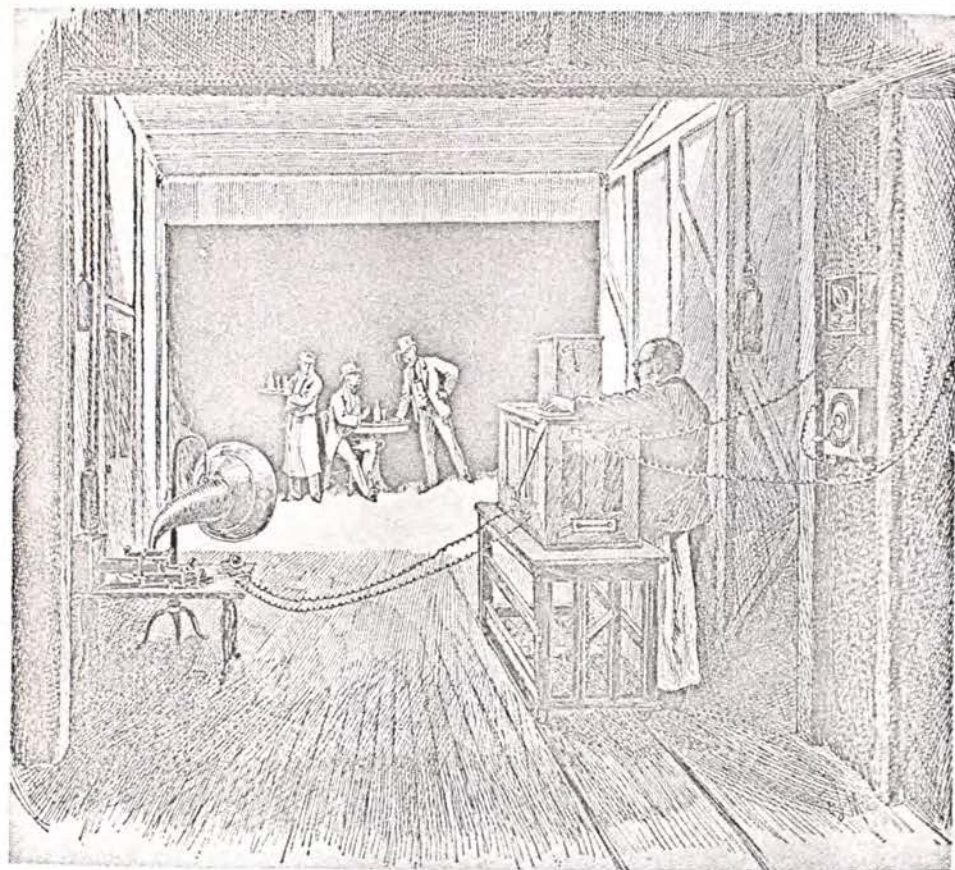
The process of "taking" is variously performed, by artificial light in the photographic department, or by daylight under the improved conditions of the new theatre, of which we shall speak. The actors are kept as compact as possible and exposed either to

the untempered glare of the sun, to the blinding effulgence of four parabolic manganese lamps, or to the light of twenty arc lamps, provided with highly actinic carbons, supplied with powerful reflectors equal to about 50,000 candle power. This radiance is concentrated upon the performers, while the kinetograph and phonograph are hard at work, storing up records and impressions for future reproduction.

A popular and inexpensive adaptation of kinetoscopic methods is in the form of the well-known nickel-in-the-slot, a machine consisting of a cabinet, containing an electrical motor and batteries for operating the mechanism, acting as the impelling power to the film, which is in the shape of an endless band, fifty feet in length, the latter being passed through the field of a magnifying glass, perpendicularly placed. The photographic impressions pass before the eye at the rate of forty-six per second, through the medium of a rotating slotted disk, the slot exposing a picture at each revolution and separating the fractional gradations of pose. Projected against a screen on the kinetographic principle of stopping and starting or viewed through a magnifying glass, the pictures are eminently satisfactory, for the reason that the enlargement need not be more than ten times the original size. The projecting room, which is situated on the upper story of the photographic department, is hung with portentous black on exhibition evenings, in order to prevent any reflection



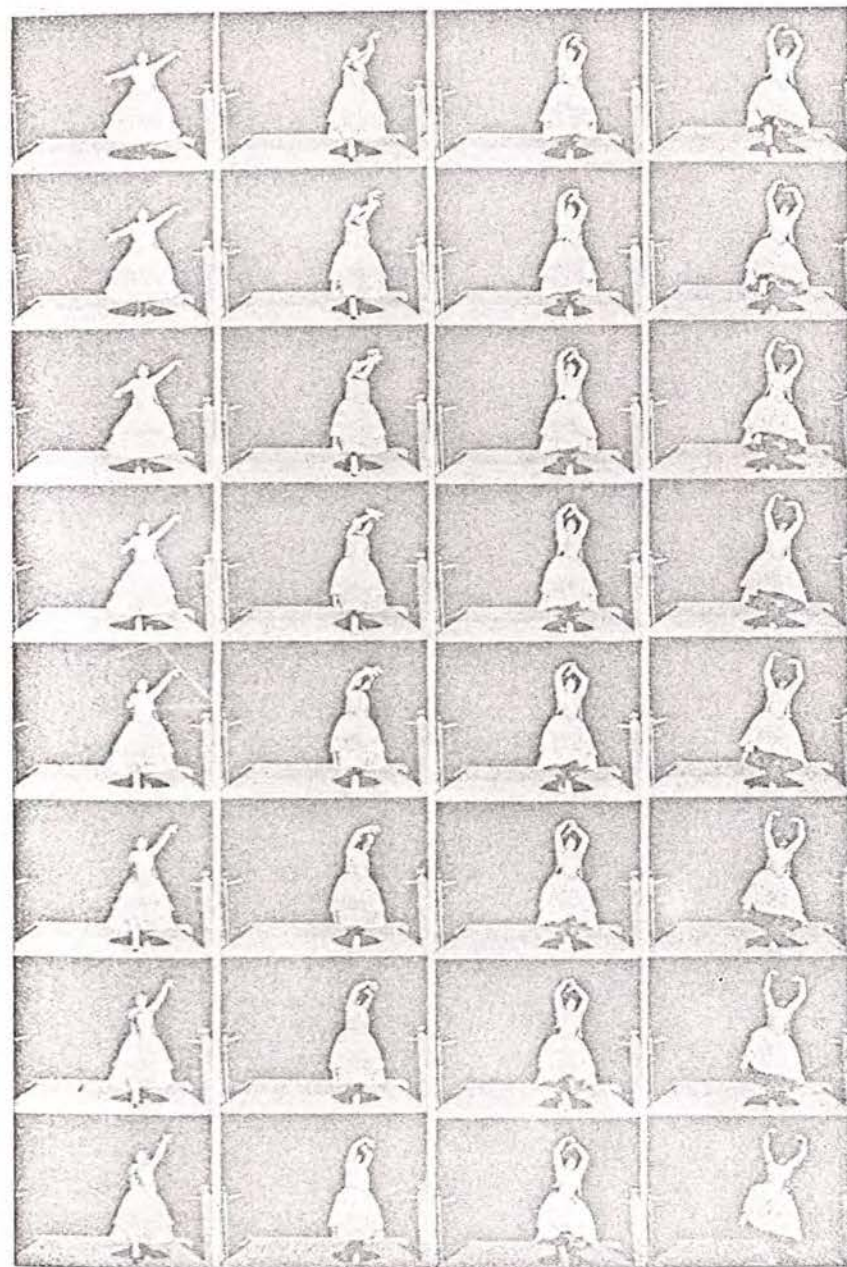
from the circle of light emanating from the screen at the other end, the projector being placed behind a curtain of the same cheerful hue and provided with a single peephole for the accommodation of the lens. The effect of these sombre draperies and the weird accompanying monotone of the electric motor, attached to the projector,



INTERIOR OF THE KINETOGRAPHIC THEATRE, SHOWING KINETO-PHONOGRAPH.

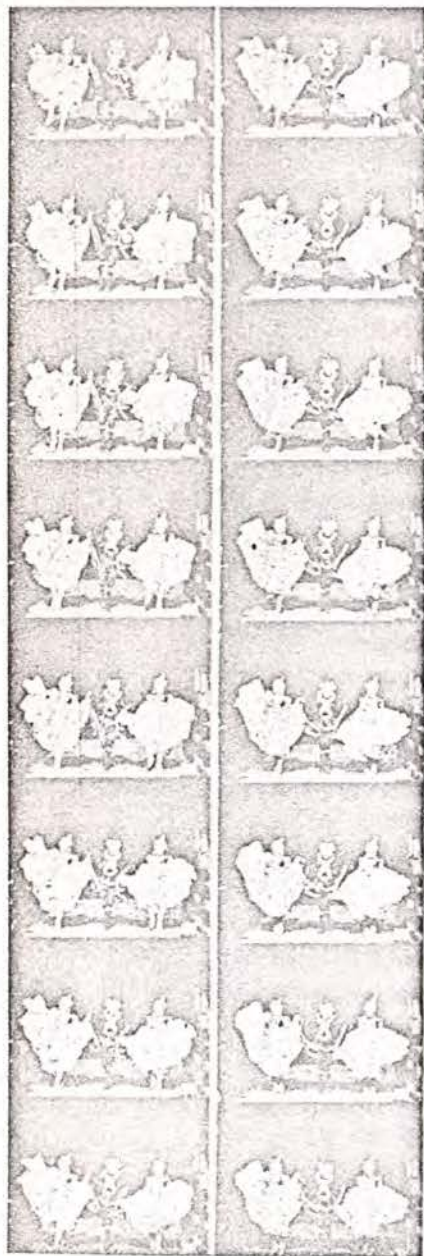
E. J. MEEKEE

are horribly impressive, and one's sense of the supernatural is heightened when a figure suddenly springs into his path, acting and talking with a vigor which leaves him totally unprepared for its mysterious vanishing. Projected stereoscopically, the results are



CARMENCITA THE SPANISH QUEEN OF DANCERS.

W. L. D.



"GAIETY GIRLS."

W. A. L. D.

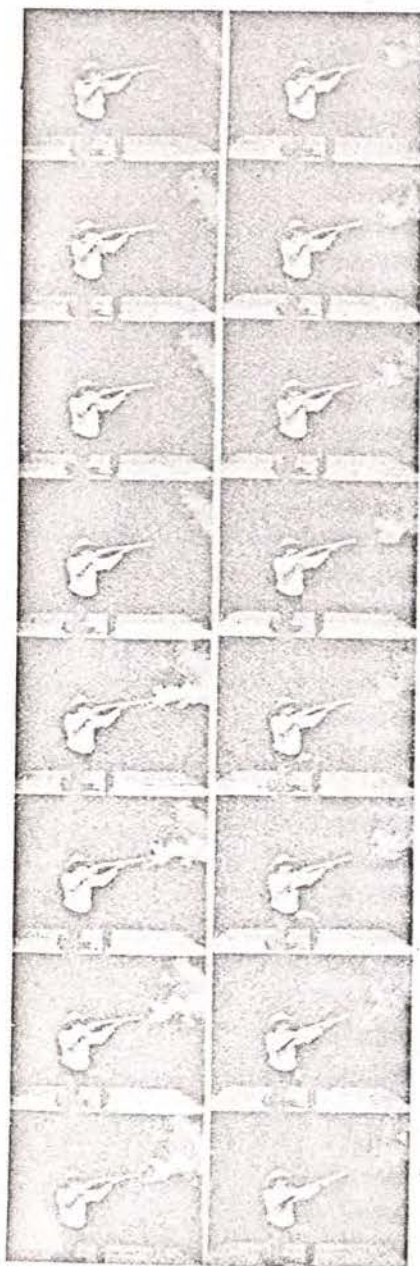
even more realistic, as those acquainted with that class of phenomena may imagine, and a pleasing rotundity is apparent which in ordinary photographic displays is conspicuous by its absence.

Nothing more marvelous or more natural could be imagined than these breathing, audible forms, with their tricks of familiar gesture and speech. The inconceivable swiftness of the photographic successions and the exquisite synchronism of the phonographic attachment have removed the last trace of automatic action, and the illusion is complete. The organ-grinder's monkey jumps upon his shoulder to the accompaniment of a strain of Norma. The rich tones of a tenor or soprano are heard, set in their appropriate dramatic action; the blacksmith is seen swinging his ponderous hammer exactly as in life, and the clang of the anvil keeps pace with his symmetrical movements; along with the rhythmical measures of the dancer go her soft-sounding footfalls; the wrestlers and fencers ply their intricate

game, guarding, parrying, attacking, thrusting and throwing, while the quick flash of the eye, the tension of the mouth, the dilated nostril and the strong, deep breathing give evidence of the potentialities within. The crowning point of realism was attained on the occasion of Mr. Edison's return from the Paris Exposition of 1889, when Mr. Dickson himself stepped out on the screen, raised his hat and smiled, while uttering the words of greeting, "Good morning, Mr. Edison, glad to see you back. I hope you are satisfied with the kineto-phonograph."



The photographic rooms, with their singular completeness of appointment, have been the birth-place and nursery of the kinetoscope; and the more important processes connected with the preparation and development of the film, together with innumerable other mechanical and scientific devices, are still carried on in this department. The exigencies of natural lighting, however, incident to the better "taking" of the subjects and the lack of a suitable theatrical stage, necessitated the construction of a special building, which stands in the centre of that cluster of auxiliary houses which forms the suburbs of the laboratory, and which is of so peculiar an appearance as to challenge the attention of the most superficial observer. It obeys no architectural rules, it embraces no conventional materials and follows no accepted scheme of color. Its shape, if anything so eccentric can be entitled to that appellation, is an irregular oblong, rising abruptly in the centre, at which point a movable roof is attached, which is easily raised or lowered at the will of a single manipulator. Its color is a grim and forbidding black, enlivened by the dull lustre of myriads of metallic points; its materials are paper, covered with pitch and profusely studded with tin nails. With its great flapping sail-like roof and ebon complexion, it has a weird and semi-nautical appearance, like the unwieldy hulk of a

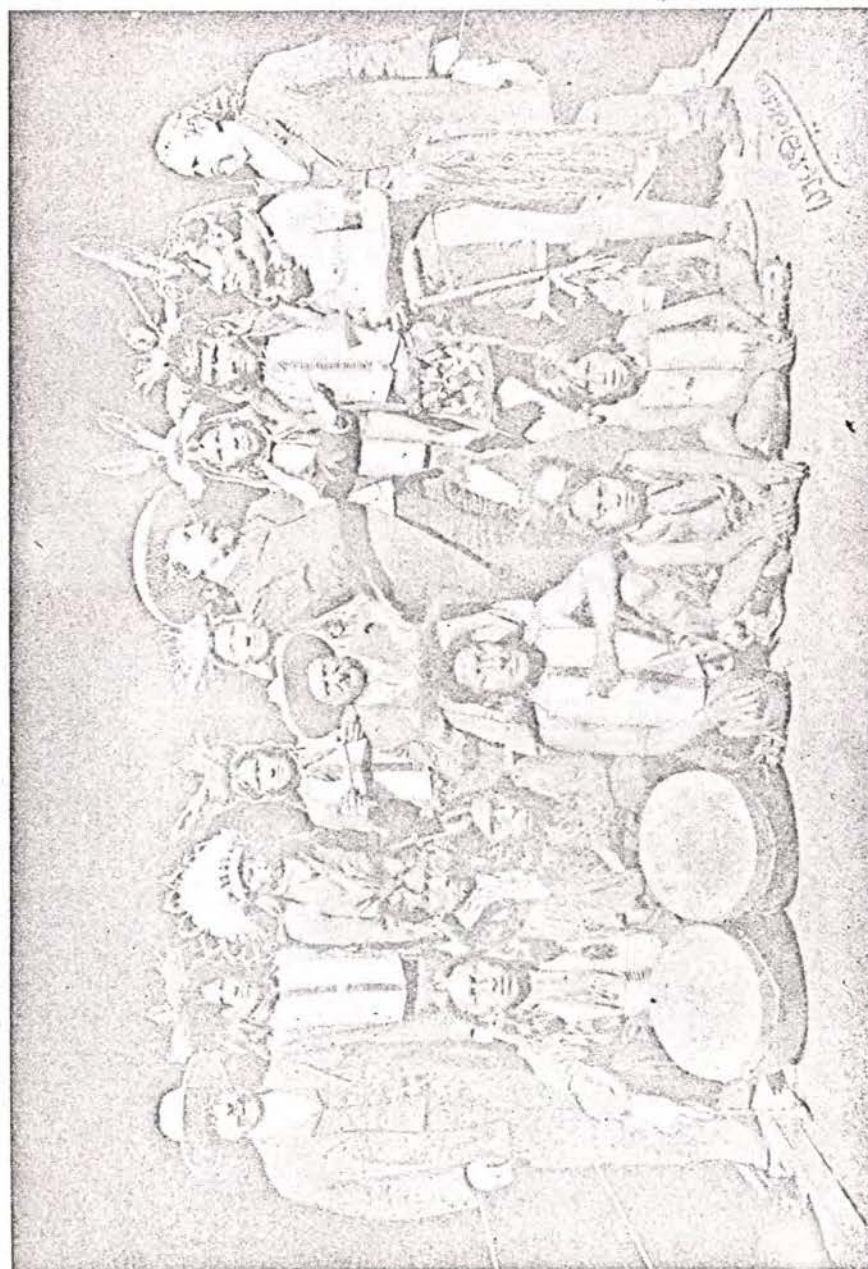


BUFFALO BILL.

W. K. L. D.

medieval pirate-craft or the air-ship of some swart Afrite, and the uncanny effect is not lessened, when, at an imperceptible signal, the great building swings slowly around upon a graphited centre presenting any given angle to the rays of the sun and rendering the apparatus independent of diurnal variations. The movable principle of this building is identical with that of our river swinging bridges, the ends being suspended by iron rods from raised centre-posts. This remarkable structure is known as the Kinetographic Theatre, or the "Black Maria," according to the mental cast of its sponsors. Entering, we are confronted by a system of lights and shades so sharply differentiated as to pain the eye, accustomed to the uniform radiance of the outer air.

As we peer into the illusive depths we seem transported to one of those cheerful banqueting halls of old, where the feudal chief made merry with human terrors, draping the walls with portentous black, and



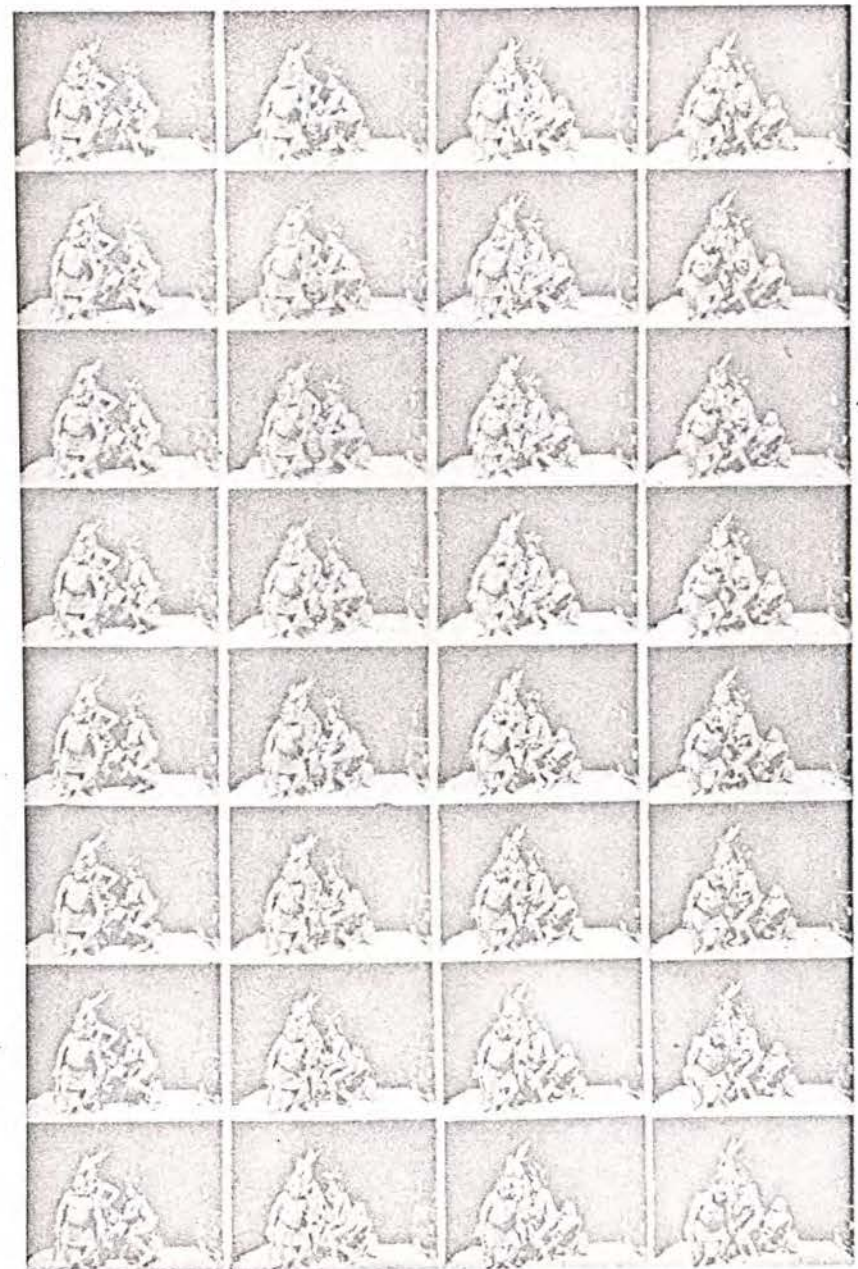
INDIAN WAR COUNCIL.



thoughtfully providing a set of coffins for the accommodation of his guests. And what is this mysterious cell at the other extremity, sharply outlined against the dazzling radiance of the middle ground and steeped in an angry crimson hue? Are these inquisitorial dungeons, and is that lurid glare the advance guard of the awful Question? Is that gentle persuasive

in process of administration, and do these half-guessed recesses conceal the hellish paraphernalia of rack and screw, glowing iron and crushing stone? Has the doom of ages overtaken our wizard at last, and is he expiating, with twisted limb and scorching flesh, the treasures of his unlawful wisdom? Ah, me! that the prosaic truth must be told. No dungeons are these, thrilling with awful possibilities, but simply a building for the better "taking" of kinetographic subjects. On the platform stand the wrestlers, pantomimists, dancers and jugglers, whose motions it is destined to immortalize. Against the nether gloom their figures stand out with the sharp contrast of alabaster basso-relievos on an ebony ground, furnishing a satisfactory explanation for the singular distinctness of the kinetographic strips. The lurid cell at the other end resolves itself into a compartment for changing the films from the dark box to the camera, the apparatus being run backward over a track leading from the black tunnel at the rear of the stage to this room, after which the door is shut and the films renewed for a fresh subject.

We have been sensible for some time of a disturbance of the ground beneath our feet, and are now aware that the building is slowly and noiselessly rotating on an axis, bringing into our range of vision the glory of the sun-rays westering to their close. Again we are reminded of that indissoluble chain of ideas which links the past with the present, and into the commonplace of existing facts come memories of that chamber in the golden house of Nero so arranged that "by means of skilfully planned machinery it moved on its axis, thus following the motions of the heavens, so that the sun did not appear to change in position, but only to descend and ascend perpendicularly."



SIoux INDIAN GHOST DANCE.

E. L. D.

No department of the wizard's domains is more fraught with perennial interest than this theatre; none are more interwoven with the laughter, the pathos, the genius and the dexterities of life. No earthly stage has ever gathered within its precincts a more incongruous crew of actors, since the days when gods and men and animals were on terms of social intimacy; when Orpheus poured his melting lays into the ears of the brute creation, and gentle Anthony of Padua lured the suffering beasts to the mouth of his desert cave. The

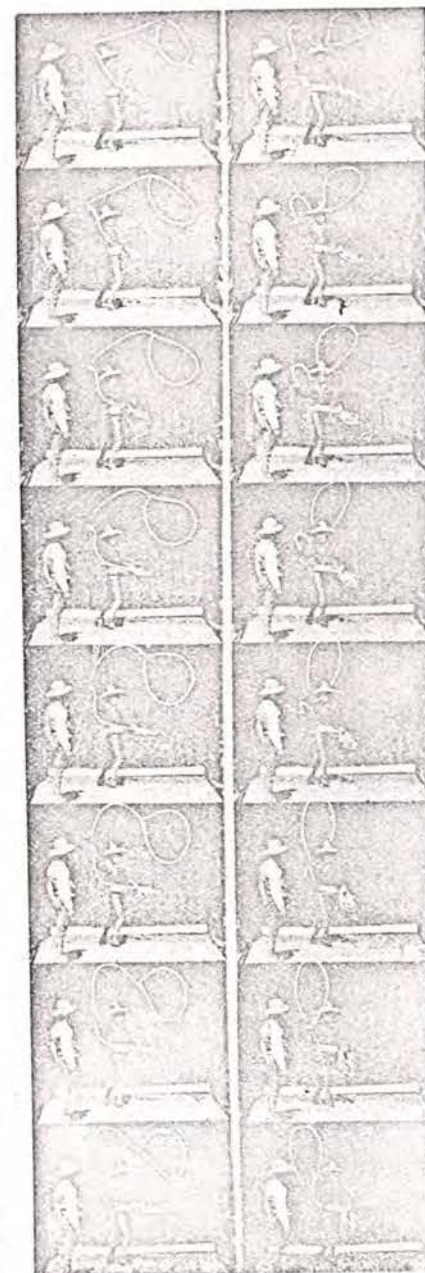


A JAPANESE BEAUTY.

Dramatis Personæ of this stage are recruited from every characteristic section of social, artistic and industrial life, and from every conceivable phase of animal existence within the scope of laboratory enterprise. Bucking bronchos, terriers and rats, accomplished dogs who turn somersaults and describe serpentine dances, trained lions, bears and monkeys are among the stars of this unique company. On one occasion, the platform was occupied by a wire cage, the sometime arena for certain gallinaceous conflicts. A duel between two aspiring and vindictive roosters took place and the films have registered the strut, the swagger and the general bravado of the feathered knights. Another day chronicled the engagement of a troupe of trained bears and their leaders, Hungarians by nationality, to whom the scientific eccentricities of the laboratory furnish an inexhaustible mine of wealth. The theatre at such times might move

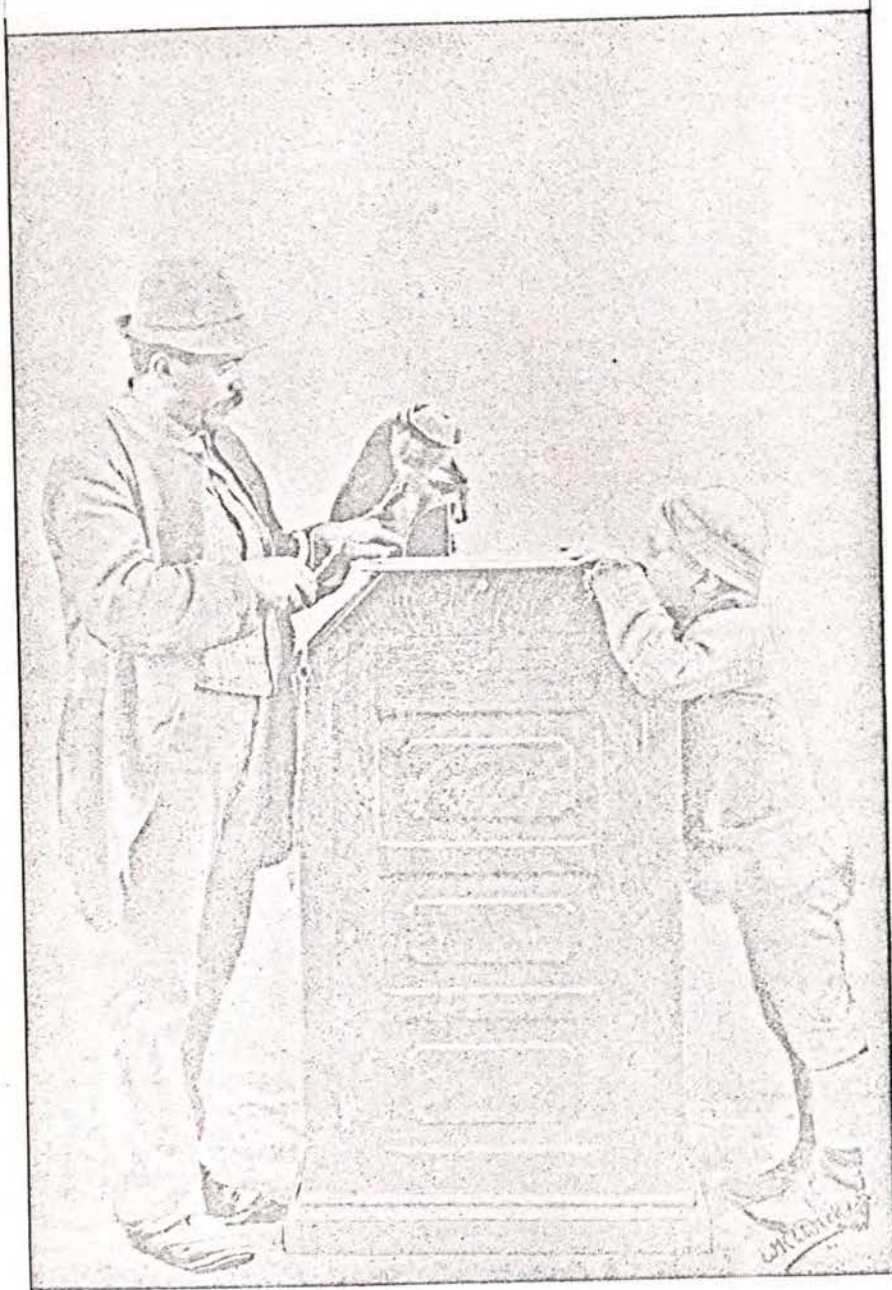
"The inextinguishable laughter of the blessed gods," and peals of these tantalizing cachinations are borne to the envious ears of dwellers in distant settlements, grim genii of the dynamo and ore milling departments. The men are tractable enough, when they can be induced to collect their scattery faculties and concentrate their attention on the exigencies of the situation; but the bears are divided between sturly discontent and a comfortable desire to follow the bent of their own inclinations.

It is only after much persuasion that they can be lifted into higher planes of thought and feeling and induced to subserve the interests of art. Once launched, however, their performances are inimitable, and nothing within the range of comic histrionics can approximate the humor of these uncouth gambols. One furry monster waddled up a telegraph pole, to the soliloquy of his own indignant growls; another settled himself comfortably in a deep armchair, with the air of a post-graduate in social science; a third rose solemnly on his hind legs and described the measures of some unclassifiable dance, to the weird strains of his keeper's music. Another blandly ignored the invitation of his two-footed ally and endeavored to divert that gentleman's mind by licking his swarthy face. Another, more warlike in tone than his companions, accepted his keeper's challenge and engaged with him in a wrestling match, struggling, hugging and rolling on the ground with a force and scientific accuracy which



LIASSO THROWER.

W. E. L. P.



"LET ME LOOK."

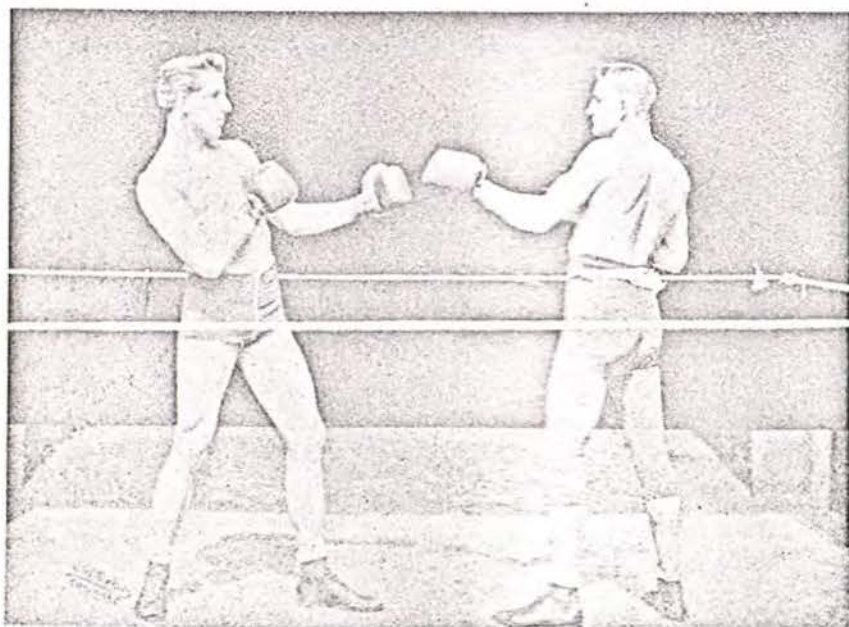


would have insured his promotion to the international championship, were equal justice dealt to man and beast in this partial world.

Cats have figured very amusingly in the laboratory shows. We had a consignment of these sent to us, fresh from their triumphs in Barnum's circus, but their Orange début was delayed, not only on account of the weather, which was unfavorable, but by reason of certain ophthalmic troubles, induced by extensive clawing at each other's optics. We placed them in solitary confinement and doctored them with eye salve, an operation attended with piercing yells and much opposition, and by the time the sun saw fit to emerge from his blanket of clouds, the company was in a condition to appear in their several feats of jumping hoops, trundling toy coaches, boxing, riding bicycles, etc. The crowning feature of the performance was a boxing match between two vigorous Toms, the suspicious animation of which pointed to something more than scientific fervor, if one might judge by the scratching, spitting and extensive shedding of fur which prevailed. The showman assured us, however, that "Pete and Jack" were the best of friends in their private capacity and generally elected to travel in the same cage.

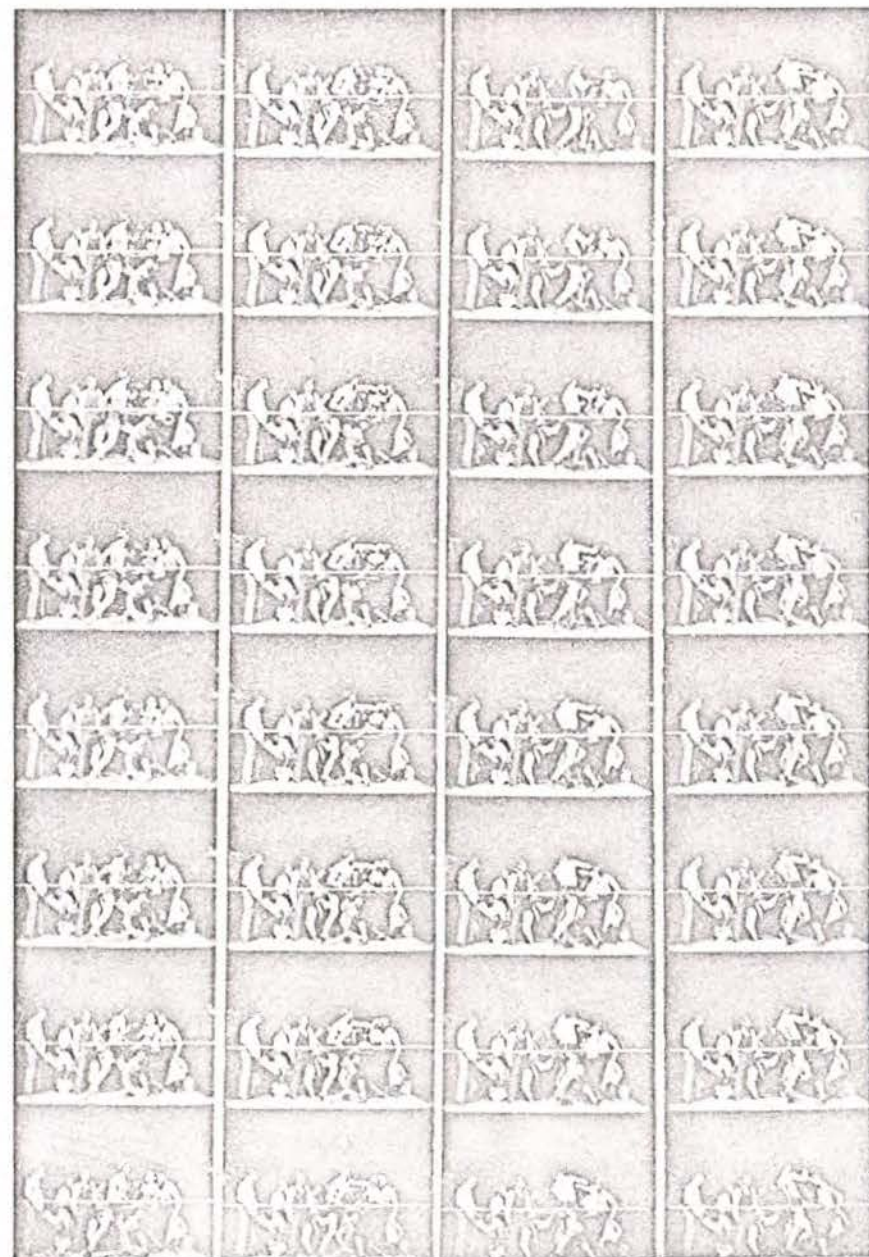
Organ-grinders and monkeys have contributed liberally to the kinetographic collection. It is estimated that the classic soil of New Jersey supports three of these itinerant musicians to each square mile, while denying its patronage to Seidl or Damrosch. It may, therefore, be inferred that artistic supplies, of this nature at least, are in no immediate danger of depletion. Every few days a native of sunny Italy may be seen describing his eccentric orbit in the direction of the Orange Laboratory, intoning his torturous strains and administering finishing touches to the decayed elegance of the monkey's attire. No perceptible chasm differentiates employer and employee. Both are draped in picturesque remnants, both reside on the frayed outskirts of society, both are

the victims of insatiable curiosity. On one occasion the nickel and slot was on view, a machine which, claiming only to be a duodecimo edition of the kinetoscope, and designed to meet the popular requirements on a simple and inexpensive basis, is limited in its scope, and admits only of a single spectator at a time, who is supposed to glue his eyes to the narrow opening at the top. It so happened that master and monkey were simultaneously stricken with the desire to see, an impulse which brought their heads into sharp contact and led to much energetic cuffing and chattering. The poor little ape went to the wall, as



CORBETT AND COURTNEY BEFORE THE KINETOGRAPH.

is generally the case with poor relations, and the Italian regaled himself with a long contemplation of his charms, after which he vacated in favor of his slave, whose delight was unbounded at the spectacle of these diminutive doubles, performing the familiar round of the itinerant repertoire. It is on record that the tiny creature laughed, actually laughed, oblivious for a few enchanted seconds of unkind man, of sunless cellars, starvation and chastisement, and the tribute is accepted as one of the most gratifying in



CORBETT AND COURTNEY FIGHT.

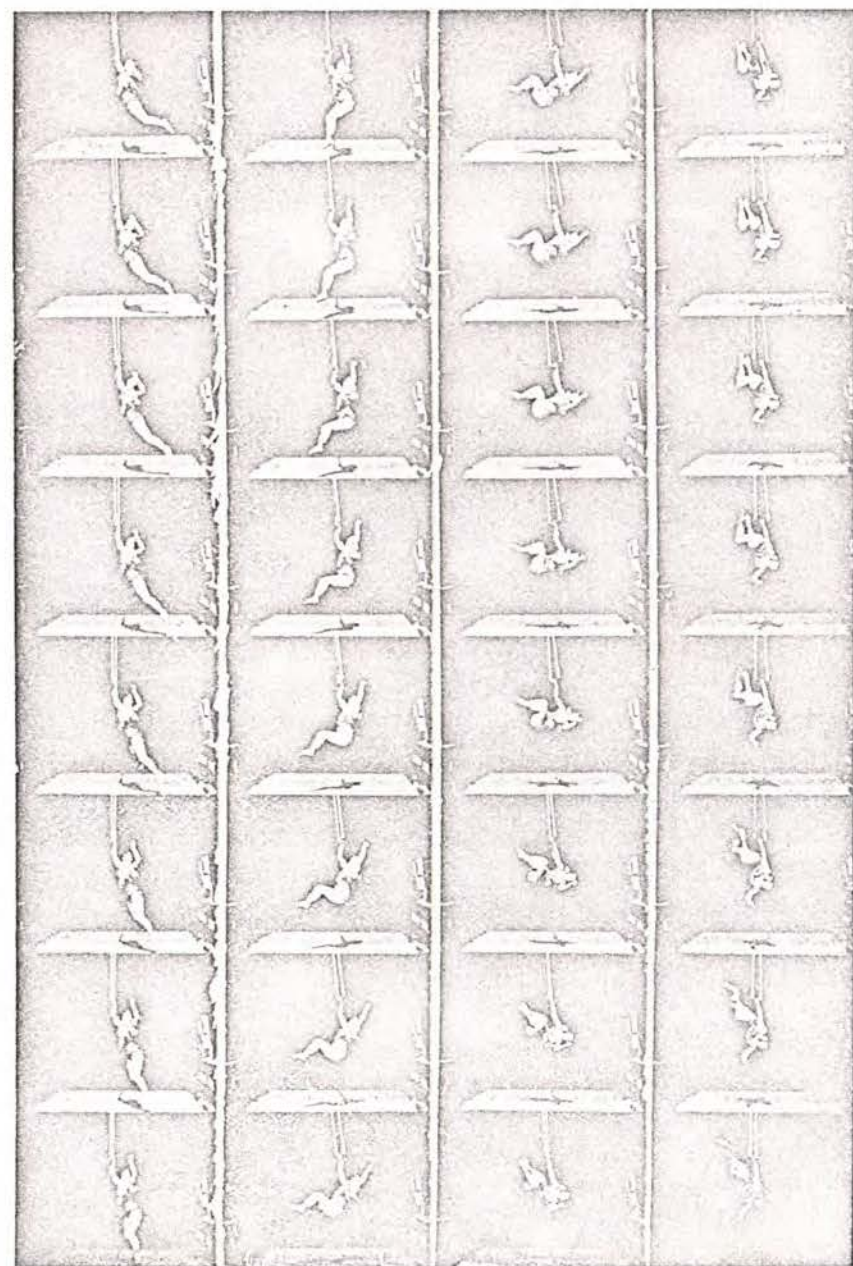
W. E. L. M.

all the archives of the sated kinetoscope. Monkeydom has an inexhaustible fund of varied emotions, underlying the unfathomable antiquity, the measureless sadness of its exterior, and we cannot doubt that Mr. Garner's researches will bring characteristics to light, which will be invaluable in the dissipation of ennui. The most *blasé* and self-contained member of the "four hundred" could hardly have opposed an impassive front to the antics of these prehistoric babies, these prophetic epitomes of man. One tiny Simian fell into ecstasies of delight over his reflected image. He postured before it, felt it with his supple fingers, chattered with easy sociability, gesticulated, danced, growled and finally darted to the back of the mirror, impelled by a spirit of laudable investigation and a desire to determine the nature and origin of the phenomenon, repeating his efforts until well assured that the mystery lay beyond the scope of his mental horizon.



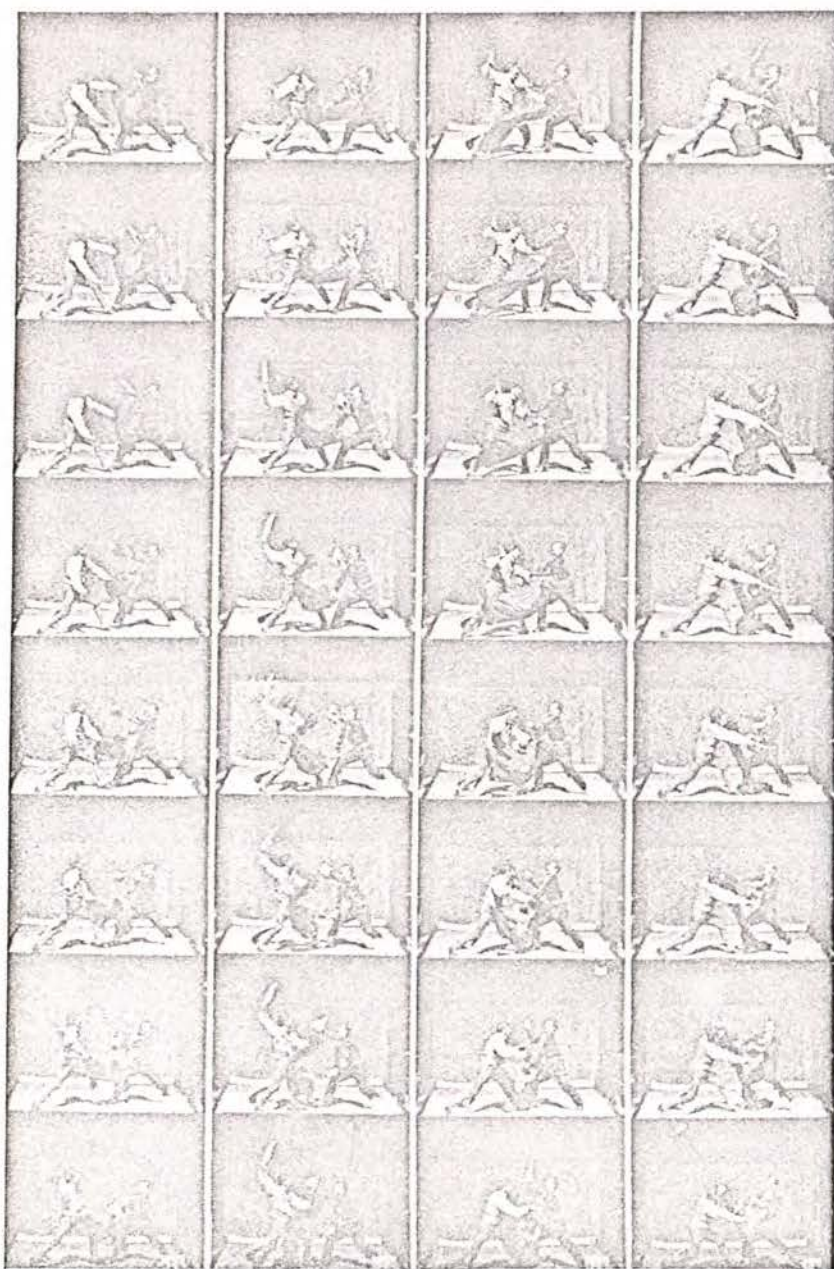
In this connection it may be said that Mr. Garner, the student of animal speech, has been among our constant visitors, and has followed the development of the kinetograph with intelligent attention. Mr. Garner's recent journey into central Africa, undertaken for the purpose of verifying his theory as to the existence of a Simian tongue, has yielded such gratifying results as to spur the explorer on to fresh endeavor. Entrenched within the recesses of an enormous cage, which was successively transported to the most teeming centres of animal life, and which was so constructed as totally to conceal the occupant, Mr. Garner was enabled to study our primitive ancestors at his ease, and to store his mind with a variety of impressions, humorous, pathetic and utilitarian.

He purposes a second trip shortly, and will bring the wide resources of the kinetograph to bear upon many additional phases of animal life, so that our aristocratic sybarites may enjoy the thrilling dramas of jungle and forest, without imperilling that "repose which is the essential attribute of good breeding," or embrowning the delicate cuticle on their patrician countenances. When music and



ALCIDE CAPITAINE.

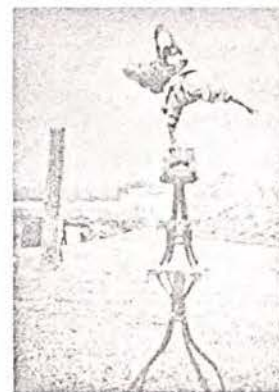
W. K. L. D.



MEXICAN KNIFE DUEL.

W. K. L. D.

oratory and histrionics have lost their power to charm, they may ensconce themselves in the yielding recesses of ruby or violet velvet thrones, with the scent of hot-house flowers around and the memory of a Lucullus feast titillating the cultured palate. From that luxurious stronghold they may contemplate the awful rush of maddened brutes, the tawny flash of the savage eyes, the lightning play of the vigorous muscles, may hear the shock of the reverberating earth, the roar of the great cats, the grinding of fangs, the tearing of iron claws, the scream of the dying elephant, the sardonic laugh of the merciless hyena,—robber and violator of the dead,—the whirr of mighty pinions as the vultures descend to their ghastly feast, all the “travailin and groaning” of burdened creation. The sunlight will tremble through the leafy arcades and cast its fantastic shadows on the opulent growth; will extract, through its own unapproachable alchemy, each superb *nuance* on tree and flower and creeper; will vivify the tawny beauty of tiger and lion, and give to the lush



trous plumage of the bird an added glory; will burnish the scale of the Ophidian and encase the flashing Coleoptera in mail of metal and gem. At the kingdoms of the world, with their wealth of color, outline and sound shall be brought into the elastic scope of individual requirement at the way of a nineteenth-century wand.

Of human subjects we have a superfluity, although the utmost discrimination has been observed in the selectic

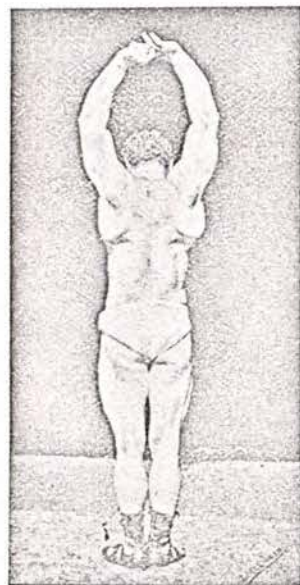


MME ARMAND 'ARY.

of themes. In point of classical beauty and as a prophetic exposition of what we may expect in the physical regeneration of the race, Eugen Sandow, the modern Hercules, stands foremost. From an anatomical point of view, this great athlete has attained ideal perfection of form, combined with phenomenal strength and grace. The gladiatorial records of Rome contain no evidence of muscular development such as Sandow presents. His normal chest development is forty-seven inches;



SANDOW.



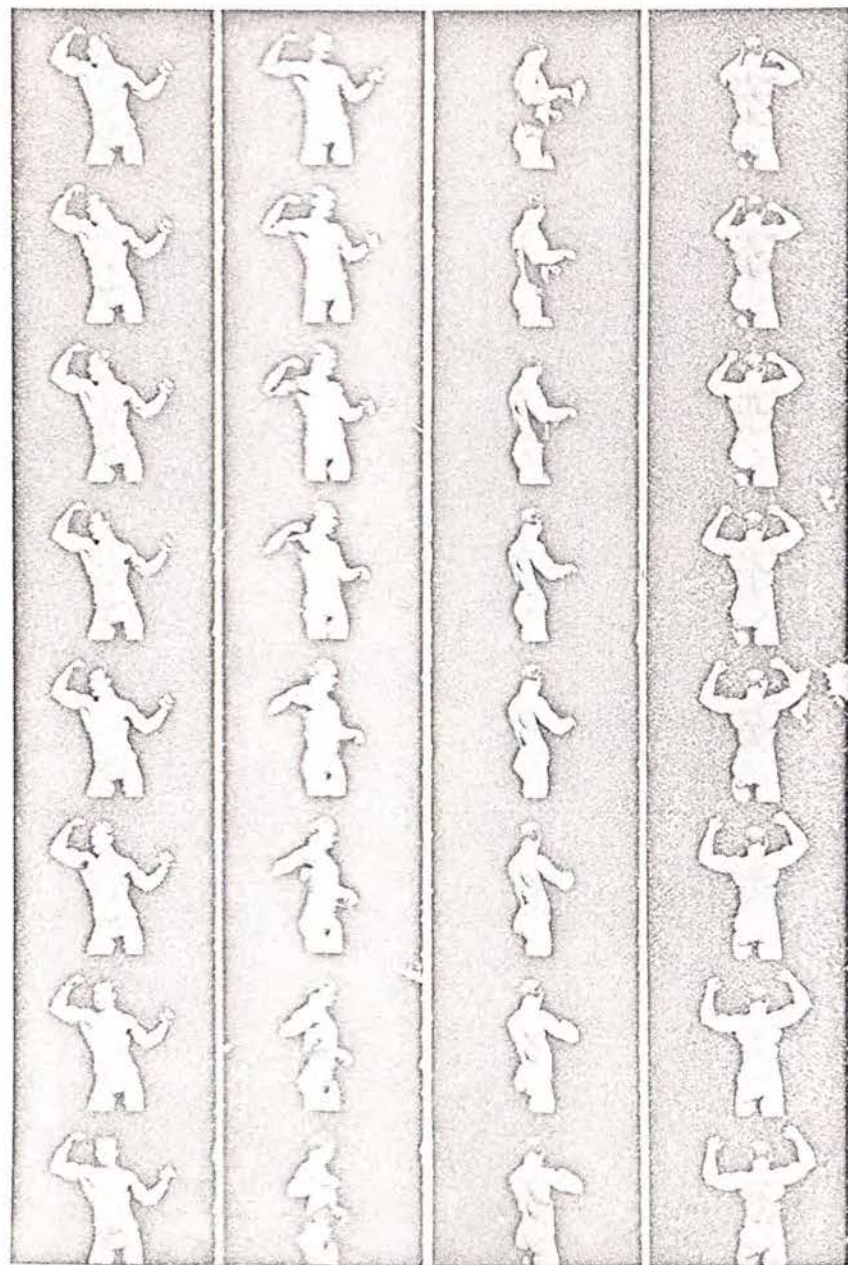
SANDOW.

expanded, it is sixty-one, showing an increase of fourteen inches. The greatest expansion ever known at the Olympic games was six. This is demonstrated in the kinetograph series, together with the more remarkable feats relating to the action and uses of the various muscles, such as the lifting of three-hundred pound dumb-bells at arm's length over his head, and the sustaining of a platform and three horses on his chest, a dead weight of over three thousand pounds. That his agility is equal to his strength is shown in the



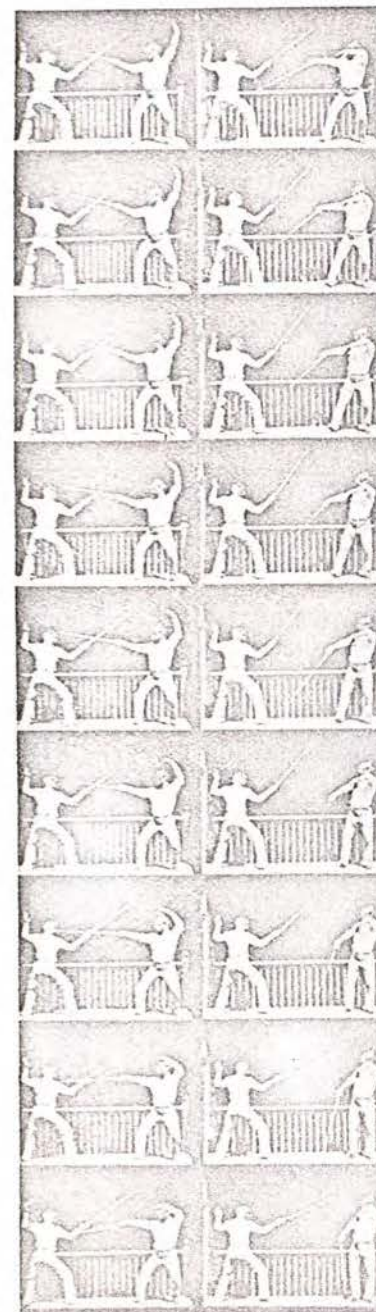
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EUGEN SANDOW, THE MODERN HERCULES.



EUGEN SANDOW.

W. K. L. D.



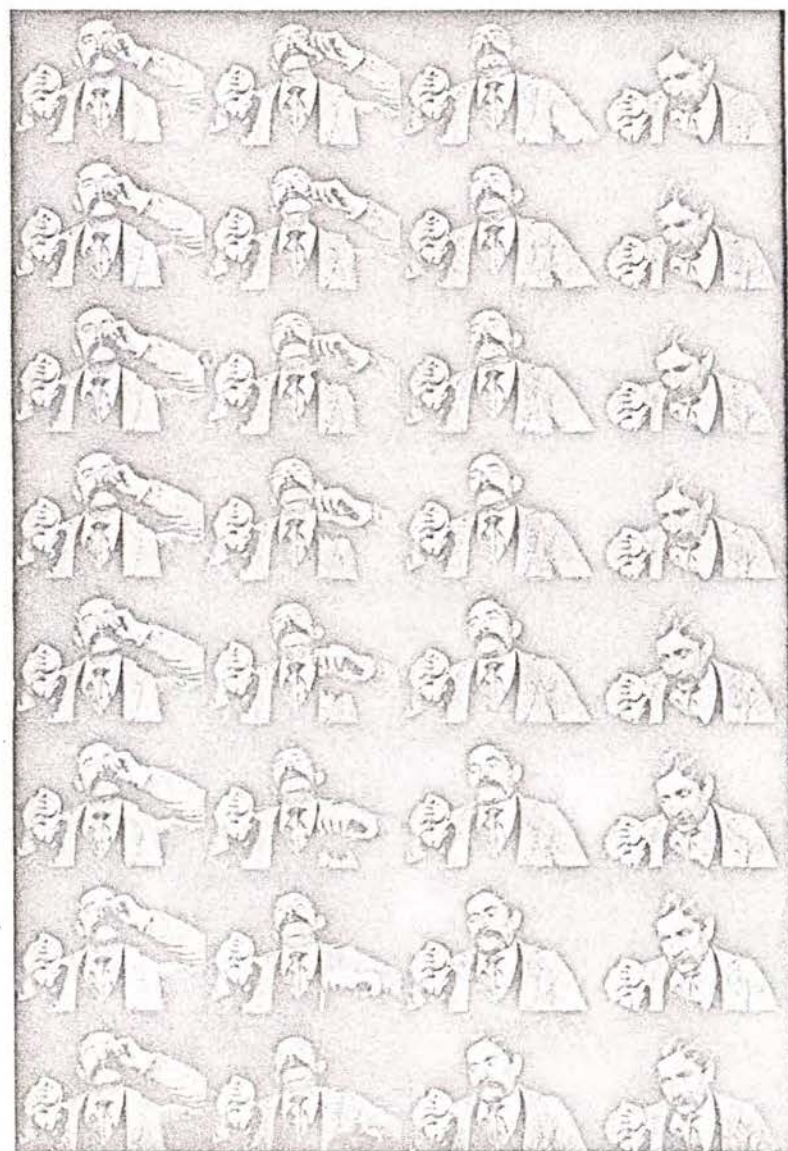
FENCERS.

W. K. L. D.

exploit known as the *Stamper Column*, where with great skill to an iron column he *stamped* downwards to the ground, lifting large dumb-bells and thus demonstrating the use of the *triceps* and *brachial* muscles. Many of his feats and poses are modeled upon the pictured achievements of ancient bards and sculptors, and the effect is artistically perfect.

In the suggestion of vigorous planes of virility, Buffalo Bill and his motley tribe have materially assisted. Nothing more stimulating can be imagined than these unconventional types of humanity, these Texas cow-boys and Mexicans, these Moors, Arabs and Indians riding, *lassing*, shooting, juggling and *sparring* with the swiftness and ease born of unimpaired physical conditions. Unique in interest also is the *Amish* war dance, the *Sioux* *ghost* dance and Indian war council, features of aboriginal life which may be historically valuable long after our political confusion is parted with the *last* *trace* of her romantic past.

Each day is enriched in cinematographic development. The records embrace the demonstration of pugilism by Corbett—the most refined and skillful exponent of



RECORD OF A SNEER.

W. K. L. M.

the art of self-defence; eastern gun-juggling and knife-tumbling by Sheik Hadji Tahar—an illustrious Moor, high in favor with the Sultan; Mexican duelling by Pedro Esquivel and Dionecio Gonzalez; the exploits of Vicente Ore Passo, the champion lasso thrower; the pugilistic and boxing parodies of Glenroy brothers and of Walton and Slavin. The broadsword exercises of the Englehart sisters; the antics of the pickaninnies from the "Passing Show"; the dancing of the three Sarashe sisters; the sword combats and acrobatism of Salem Nassar and Nazib; the whirlwind



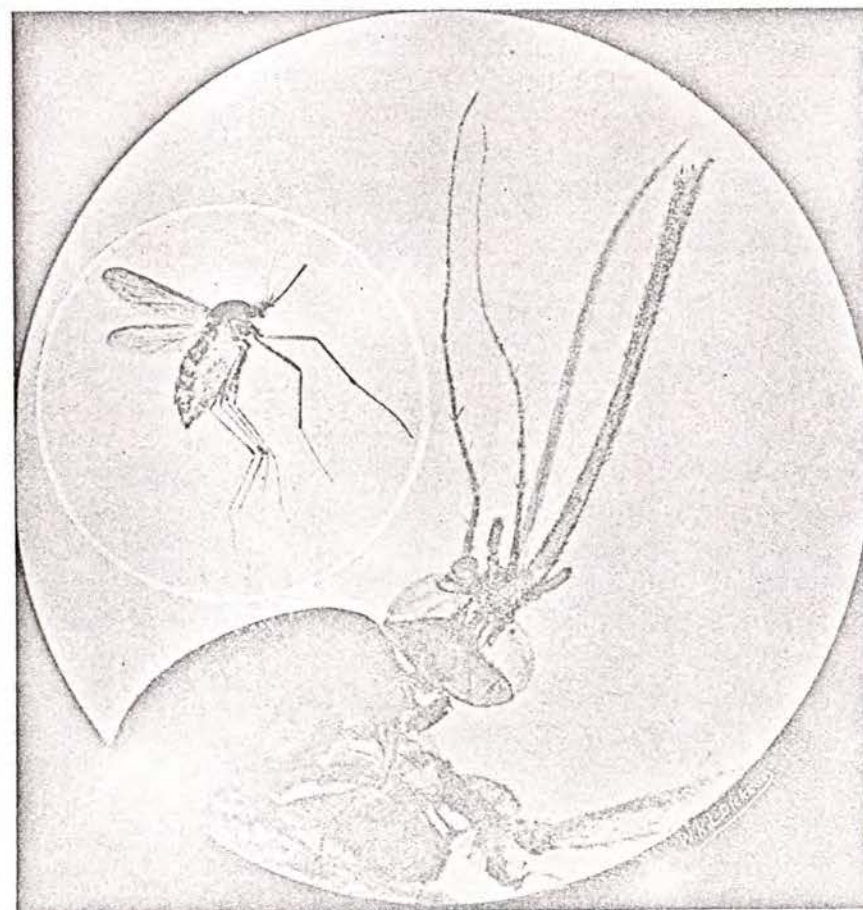
JOHN WILSON.

gun-spinning of Kessell; the Japanese twirling of Toyo Kichu; the marvelous sharp-shooting of Buffalo Bill and Annie Oakley; the perilous feats of Caicedo, king of the wire, and of Mme. Alcide Capitaine, on the trapeze; the terpsichorean measures of Carmencita, and the houris yclept "Gaiety-girls" from the Prince of Wales' Theatre, London, and a thousand others which it would be impossible to chronicle specifically.

Among these unclassifiable subjects are our recent mirthful experiences in securing the record of a sneeze. The victim was requested to assume a seat and favor the audience with that mild convulsion, and to the furtherance of that end, a large pinch of snuff was administered, the operator standing meanwhile in readiness, so as to catch the results in a graded series of one thousand pictures. A breathless silence ensued, the victim's face screwed, puckered and collapsed. There was evidently a hitch somewhere in the anatomical machinery. A second and larger pinch was administered, with no better result; a dose of ground tobacco followed, capped by a generous portion of black pepper. In vain. The wretched youth coughed, choked, sniffed, finally dissolving into tears, and amid shouts of laughter the attempt was abandoned,

only to be renewed a few days later when the desired results were secured. Science hath her martyrs as well as religion.

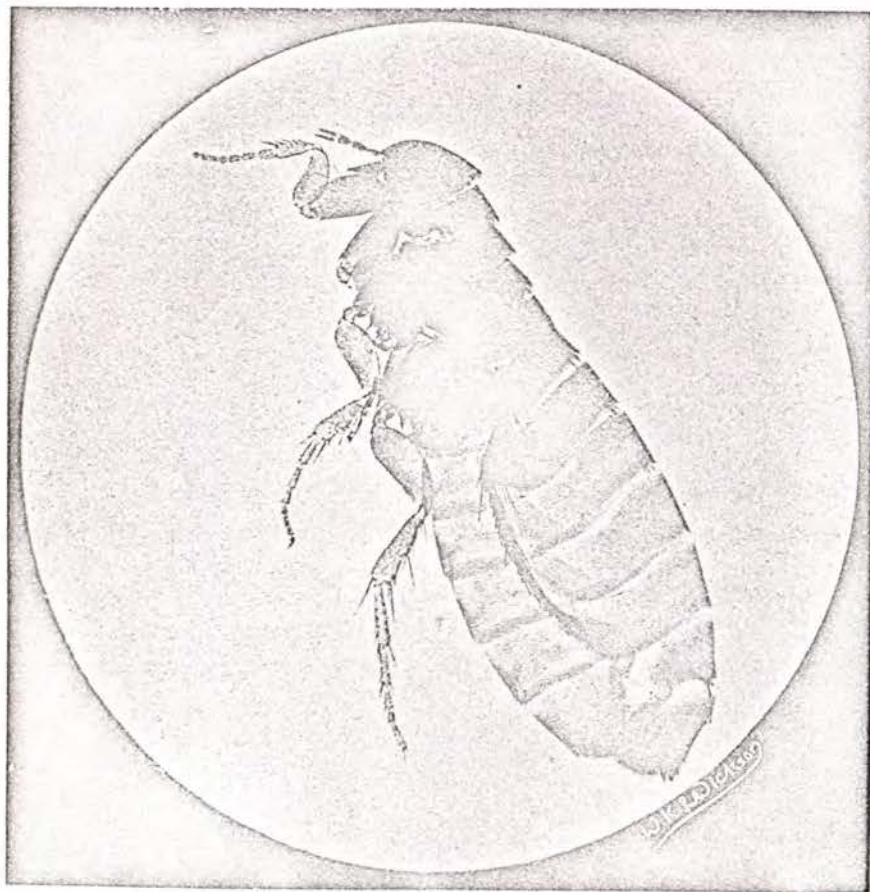
Our quiver is almost full, and we have not touched as yet upon the microscopic subjects, a class of especial interest as lying



MICROSCOPIC ENLARGEMENT OF A MOSQUITO, SHOWING FEELERS, LANCE AND SUCTION TUBE.

outside of the unaided vision of man. In the treatment of these infinitesimal types, much difficulty was experienced in obtaining a perfect adjustment so as to reproduce the breathing of insects, the circulation of blood in a frog's leg, and other attenuated pro-

cesses of nature. The enlargement of animalculæ in a drop of stagnant water proved a most exacting task, but by the aid of a powerful lime-light concentrated on the water, by the interposition of alum cells for the interception of most of the heat rays, and by



MICROSCOPIC ENLARGEMENT OF A FLEA.

the use of a quick shutter and kindred contrivances, the obstacles were overcome and the final results were such as fully to compensate for the expenditure of time and trouble. We will suppose that the operator has at last been successful in imprisoning

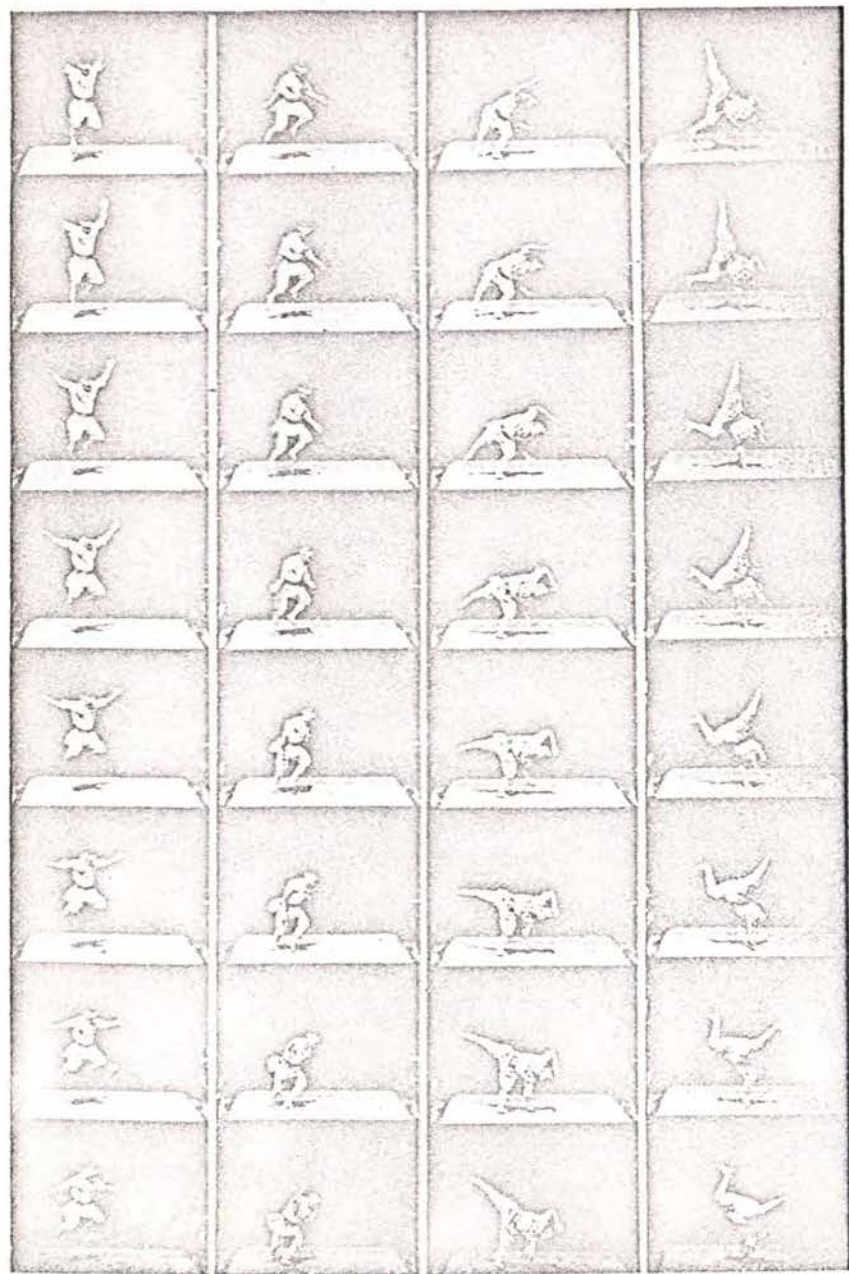


W. E. L. D.
BOXING CATS.

tricksy water-goblins on the sensitive film, and in developing the positive strip and placing it in the projector. A series of inch-large shapes then springs into view, magnified stereoptically to nearly three feet each, gruesome beyond power of expression, and exhibiting an indescribable celerity and rage. Monsters close upon each other in a blind and indiscriminate attack, limbs are dismembered, gory globules are tapped, whole battallions disappear from view. Before the ruthless completeness of these martial tactics the Kilkenny cats fade into insignificance, and the malign Jersey mosquito resolves itself into an honorable champion, sounding the bugle of approach and defiance. A curious feature of the performance is the passing of these creatures in and out of focus, appearing sometimes as huge and distorted shadows; then springing into the reality of their own size and proportions. Investigations in this line, while enriching the general mental store, are scarcely conducive to domestic comfort. An unseen enemy is usually voted to be peculiarly undesirable, but who would not close their eyes to the unimaginable horrors which micro-photography reveals in connection with the kinetoscope? Who would not prefer the mosquito as we know him, a brace of gossamer wings, a tiny bugler in the insectiferous ranks of creation, to this monstrous Afrite with its hungry and innumerable eyes, its ribbed and

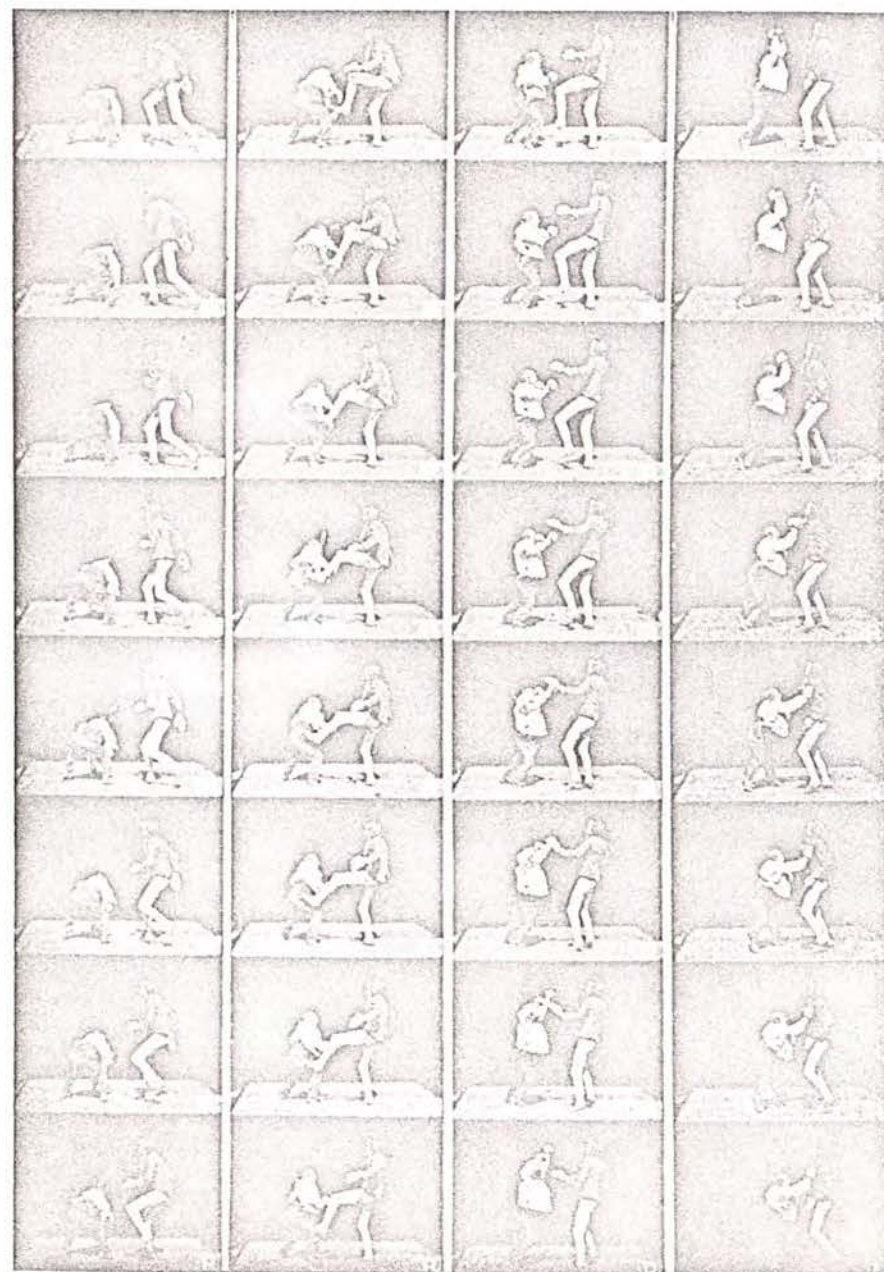


W. E. L. D.
BOXING CATS.



SHEIK HADJI TAHAK.

W. K. L. D.

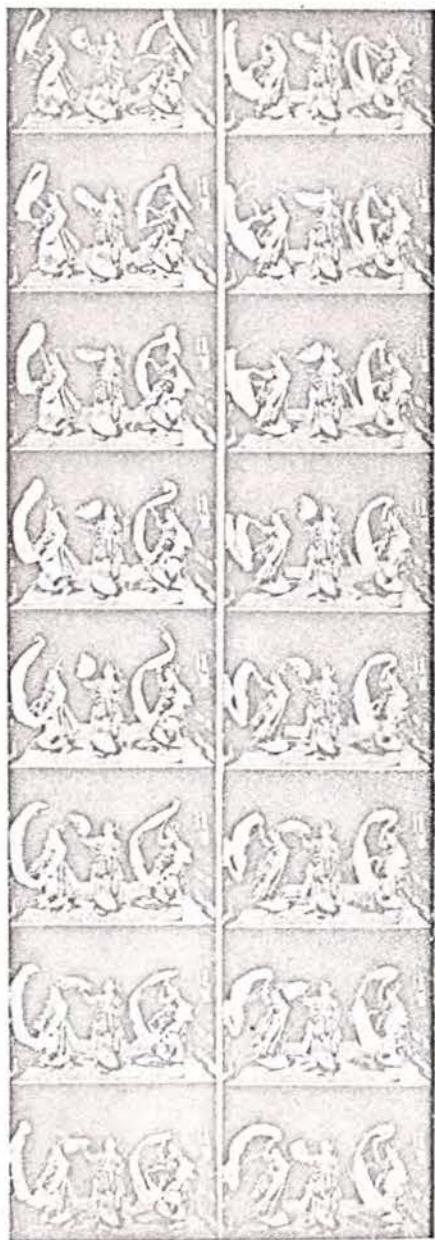


WALTON AND SLAVIN—FROM "1492."

W. K. L. D.
Raymond R. Wile
Research Library

bat-like pinions, and its formidable arsenal of weapons? Who would not prefer the squat little speck which we know as the flea, and whom, if we do not exactly welcome, we at least tolerate, to this hideous apparition, with its bristling body and its lobster-like shape? What ratio does the comely and affectionate house-fly bear to this spiky argus-eyed demon of the microscope? Dead specimens are bad enough in all conscience, mere spreadings of animal matter as they are, but when the kinetoscope steps in and reveals the malign activities beneath these awful shapes, the merciless plunge of the bill and its cargo of human gore, the sharp stab of the long serrated lance, the hypodermic injections of virulent poison, then are we indeed in evil case and disposed to murmur dubiously, "Where ignorance is bliss 'tis folly to be wise."

Thought is the great, indeed the only constructive material which we possess; the imagination or image-forming faculty is immeasurably potent in the moulding



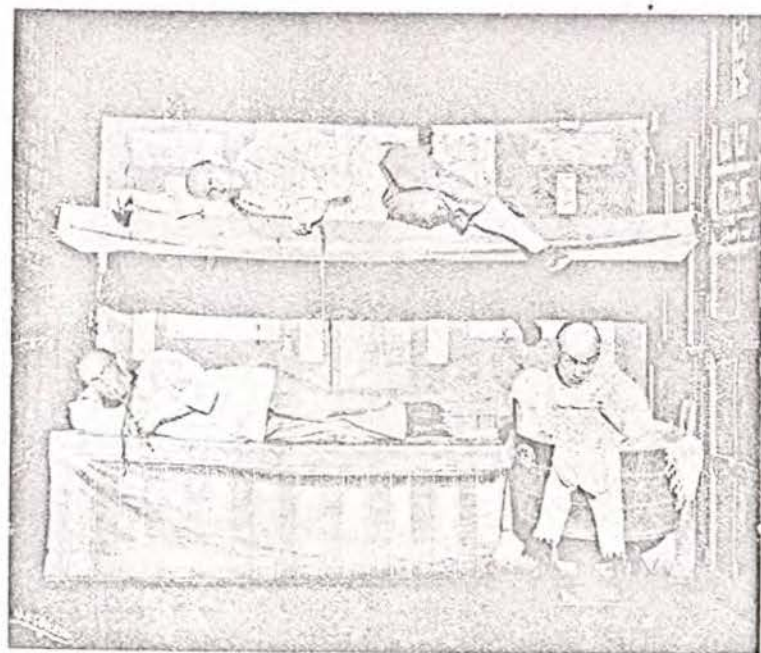
JAPANESE DANCERS.

W. A. L. D.

of mind and body. What will be the effect of this torrent of appalling impressions upon the mental and physical tissues? Imagine a super-sensitive brain transported from these enlarged monstrosities to the magnifying lenses of dreamland. What howls of mortal anguish one may expect and what an unpleasant stir generally in that gentleman's domestic economy. Then, inasmuch as

"of the soule the bodie forme doth take
For soule is forme and dothe the bodie make,"

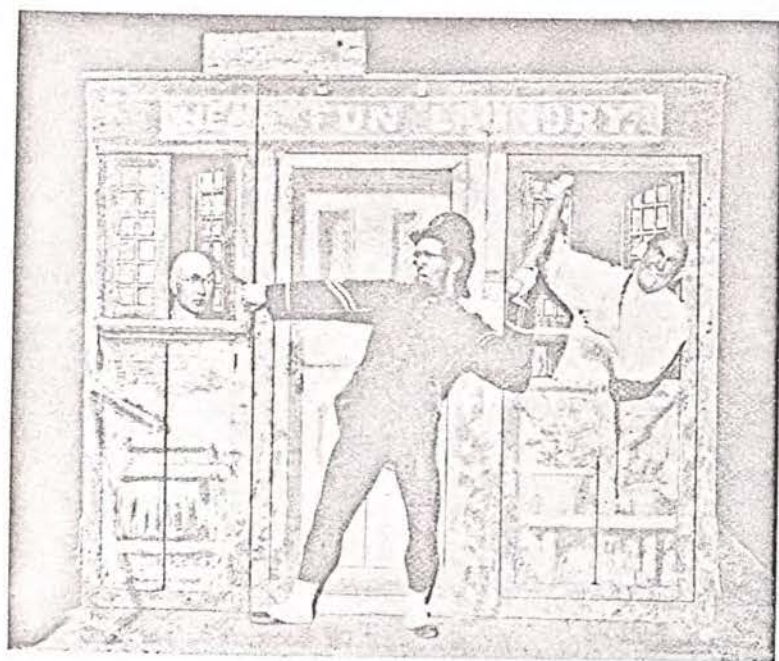
our globe is likely to be peopled by singular modifications of



Kinetoscopic Image four times enlarged.
OPIUM DEN.

existing types, engendered by the frightful scientific discoveries of the day, so that we may confidently look forward to a race of beings before which the twin horrors of Sicily, the Chimeras, the Cyclops and Centaurs, the triple-headed dogs and seven-headed serpents of ancient Greece are respectable and humdrum characters.

Hitherto we have limited ourselves to the delineation of detached subjects, but we shall now devote some space to one of our most ambitious schemes, of which these scattered impersonations are but the heralds. Preparations have long been on foot to extend the number of the actors and to increase the stage facilities, with a view to the presentation of an entire play, set in its appropriate frame. Although necessarily crude, these efforts undoubtedly contain the germs of ultimate success. We have



Kinetoscope Image four times enlarged.
ROW IN A CHINESE LAUNDRY.

enacted quite a number of experiences, one of which is supposed to take place in a barber's shop. The establishment is fitted up with a chair, shaving apparatus and everything suited to the requirements of tonsorial art, while a flaring sign invites the "Great Unshorn" to relieve themselves of their superfluous hirsute adornments at the modest expenditure of a nickel. The customers enter—rather a shady lot, as may be inferred from the



FIRE RESCUE.

prices,—are received by the artist (a brilliant young Greek professional who kindly lent his services), are hustled unceremoniously into the chair, lathered, scraped and despoiled of their locks in business-like fashion and with small regard for tender susceptibilities. The operation over, "Next" is roared out imperiously, and the summons are responded to by a stampede of excited competitors. A scrimmage follows, in the effort to secure the solitary chair, the barber attempts in vain to restore order, and the scene ends with a general fight.

On another occasion, an impromptu picnic was rigged up just outside the stately grounds of the "Black Maria." The actors fell readily into position, being possessed of a good deal of unsuspected histrionic talent, and the scene was soon animated in the extreme. A fire was lit, a gipsy kettle hung, and some one commenced energetically to blow the embers; crockery

and comestibles were unpacked and set out invitingly by several deft-handed maidens, while a *mauvais sujet*, oblivious of the presence of these charmers, vaulted upon the table, drew a beaker of foaming ale and started a general frolic.

A highly condensed *finale* from Hoyt's "Milk White Flag" was also given, comprising twenty-four actors, together with certain thrilling Mongolian experiences, enacted respectively in a laundry and opium den. These are quite lively, necessitating, as they do, the intervention of the police, and an indiscriminate *melée*. Possibly the most exciting scene in our repertoire is a fire rescue with the stage-honored accessories of ladders, a burning house, clouds of steam and smoke, and a lovely female, airily clad, leaping into the extended arms of a gallant hero.

To the final development of the kinetographic stage, than which no more powerful factor for good exists, no limitations can possibly be affixed. The shadowy histrionics of the near future will yield nothing in realistic force and beauty to their material sisters. No imperfections will mar the illusion. The rich strain of a Seidl or Damrosch orchestra, issuing from a concealed phonograph, will herald the impending drama, and attune the hearts of the expectant throng. The curtain will rise, exposing some one of the innumerable phases of pictorial art, some soft English pastoral or cosy interior of a mansion, some fastness in the Alps or Himalayas, some tempestuous ocean scene, quickened with the turbulent



"MILK WHITE FLAG."

anguish of the unresting sea, some exquisite landscape, steeped in the jeweled lights of sunset or the roseate sheen of morn. The actors will enter singly and in groups, in the graceful interweaving of social life, the swirl of the dance or the changeful kaleidoscope of popular tumult. The tones will be instinct with melody, pathos, mirth, command, every subtle intonation which goes to make up the sum of vocalism; the clang of arms, the sharp discharge of artillery, the roll of thunder, the boom of ocean surges, the chant of the storm wind, the sound of Andalusian serenades and the triumphant burst of martial music,—all these effects of sight and sound will be embraced in the kinetoscopic drama, and yet of that living, breathing, moving throng, not one will be encased in a material frame. A company of ghosts, playing to spectral music. So may the luminous larvæ of the Elysian Fields have rehearsed earth's well-beloved scenes to the exiled senses of Pluto's Queen.

This line of thought may be indefinitely pursued with application to any given phase of outdoor or indoor life which it is desired to reproduce. Our methods work admirably and every day adds to the security and the celerity of the undertaking. No scene, however animated and extensive, but will eventually be within reproductive power. Martial evolutions, naval exercises, processions and countless kindred exhibitions will be recorded for the leisurely gratification of those who are debarred from attendance, or who desire to recall them. The invalid, the isolated country recluse, and the harassed business man can indulge in needed recreation, without undue expenditure, without fear of weather, without danger to raiment, elbows and toes, and without the sacrifice of health or important engagements. Not only our own resources but those of the entire world will be at our command, nay, we may even anticipate the time when sociable relations will be established between ourselves and the planetary system, and when the latest doings in Mars, Saturn and Venus will be recorded by enterprising kinetographic reporters.

The advantages to students and historians will be immeasurable. Instead of dry and misleading accounts, tinged with the exaggerations of the chroniclers' minds, our archives will

be enriched by the vitalized pictures of great national scenes, instinct with all the glowing personalities which characterized them.

What is the future of the kinetograph? Ask rather, from what conceivable phase of the future it can be debarred. In the promotion of business interests, in the advancement of science, in the revelation of unguessed worlds, in its educational and re-creative powers, and in its ability to immortalize our fleeting but beloved associations, the kinetograph stands foremost among the creations of modern inventive genius. It is the crown and flower of nineteenth-century magic, the crystallization of Eons of groping enchantments. In its wholesome, sunny and accessible laws are possibilities undreamt of by the occult lore of the East; the conservative wisdom of Egypt, the jealous erudition of Babylon, the guarded mysteries of Delphic and Eleusinian shrines. It is the earnest of the coming age, when the great potentialities of life shall no longer be in the keeping of cloister and college, sword or money-bag, but shall overflow to the nethermost portions of the earth at the command of the humblest heir of the divine intelligence.



REPOSE.

FINIS.

(From American Annual of Photography. —By request.)



If the general public were asked to name the most important photographic discovery of the year, there is little doubt but what they would be unanimous in declaring the kinetoscope. Although the idea is by no means a new one, Muybridge, Anschütz, Marey and others have already worked at the same theory on a comparatively small scale, yet the kinetograph can in no way be compared with the machines of other workers. While the latter consisted of a battery of at most twenty-four cameras, exposed by electricity, the kinetograph is but a single camera, capable of making many thousands of photographs in the space of a few seconds. When Edison conceived the idea the working out of the arrangement was intrusted to Mr. W. K. L. Dickson, a clever young electrical engineer. There are few who really can imagine the thousands

of difficulties that required to be overcome before such an apparatus could be made to work satisfactorily. Imagine a roll of film one hundred and fifty feet long, which, in the space of 90 seconds, had to have impressed upon it nearly three thousand images. Imagine the delicate and perfect arrangement that had to be constructed to bring this film accurately into place, and expose it to the light each time without the slightest vibration—without the slightest hitch of any kind. Those who have studied the details of the arrangement pronounce it to be simply marvelous, and reflecting the highest credit on the clever engineer. Some account of this gentleman's career will, we are sure, be interesting to our readers. William Kennedy-Laurie Dickson was born in France and educated in England. His father, James Dickson, was a distinguished English painter and lithographer; many artists are numbered in his ancestral roll, among others the great Hogarth. His mother was Miss Elizabeth Kennedy-Laurie, of Woodhall, Kirkcudbright, Scotland, a brilliant scholar, musician, and renowned for her beauty, who ~~was~~ ^{is} ~~apparently descended from~~ ^{is} ~~her~~ ^{she} son. She was a descendant of the Lauries of Maxwellton, immortalized in the celebrated ballad, "Annie Laurie," and the Robertsons, of Strowan, connected with the Earl of Cassilis, the Duke of Athol, and the Royal Stuarts.

In his youth young Dickson gave evidence of a strong disposition to electrical experiments. Edison was his favorite scientific hero, and his youthful ambition

was not realized until, in 1879, he came to America, and, two years later, although but 21 years of age, attached himself to the great inventor in the capacity of superintendent of the testing and experimental department at the works in Goerck Street, New York. He was prominent in the development of the Electric Light Co., was chief electrician in the Edison Electric Tube Co., of Brooklyn, and was charged with the office of laying the first telegraphic and telephone wires underground in New York City during Mayor Grant's administration.

He is now chief of the electro-mining and kinetographic work at Edison's laboratory in Orange, having matured the magnetic separation of iron and other ores; is co-patentee with Edison of magnetic ore separators, and has completed for the inventor the kinetograph, kinetoscope, and phono-kinetoscope.

In this connection Mr. Edison, in the June number of *The Century*, thus speaks of Mr. Dickson:

"I believe that, in coming years, by my own work and that of Dickson, Muybridge, Marey, and others who will doubtless enter the field, that grand opera can be given at the Metropolitan Opera House at New York without any material change from the original, and with artists and musicians long since dead."

Messrs. Crowell & Co., of New York and Boston, whose specialty in classical *éditions de luxe* is universally recognized, are issuing a magnificently bound and illustrated biography of Edison, written by Mr. Dickson and his sister, Miss Antonia Dickson, which, in the opinion of leading judges, is as notable for wide scientific information as for purity of diction, dramatic force and lucidity of style. The peculiar advantages enjoyed by the authors in over thirteen years' intimacy with the inventor are shown in the accuracy and varied interest of the biography.

We give herewith some of the kinetograph pictures taken by Mr. Dickson, and a portrait of that gentleman.

Photography in colors still appears far away from our grasp. The improvements made by the Lumière Bros. upon the Lipmann process are of considerable interest, but it is very doubtful if this method of obtaining colors by interference is ever likely to result in a practical process.

Such have been, as well as we can call to mind, the principal discoveries and improvements during the past twelvemonth. What wonders will the coming year bring forth? Who can tell?

We have, fortunately, men—clever men—among us who are ever trying to invent and to improve. Men who devote their lives to the advancement of photography with but little reward, for who ever heard of a photographic inventor growing rich by his labors? But they work on, satisfied with their efforts to benefit their fellow creatures and the fascination that always exists in experimental work.

W. E. WOODBURY, Editor.

AMERICAN GRAPHOPHONE COMPANY.

Principal office 919 Penna. Ave.

WASHINGTON, D.C., Oct. 31, 1894.

Notice is hereby given that ALL who USE, BUY or SELL the so-called EDISON PHONOGRAPH are INFRINGING the PATENTS of the AMERICAN GRAPHOPHONE COMPANY, and are subject to PROSECUTION in the Courts.

The improved phonograph was originally manufactured under the patents of the American Graphophone Co., and put upon the market by Jesse H. Lippincott, to whom authority was specially granted by the American Graphophone Co. After the failure of Mr. Lippincott, the North American Phonograph Co., assumed to carry on the sale of phonographs without license and without payment of royalties; in consequence of which the American Graphophone Co. entered suit against the North American Phonograph Co. This suit was being vigorously pressed up to the time of the bankruptcy of the North American Phonograph Co., which has recently taken place.

The American Graphophone Co. preferred to settle first with the larger infringers, but their disappearance renders this course impossible. It has therefore been determined to give notice to all who use or deal in the phonograph that they must immediately cease so doing or answer to this Company in damages.

Proceedings have already been instituted against the United States Phonograph Co., of New ark, N.J., the New England Phonograph Co., the Ohio Phonograph Co., and the Kansas Phonograph Co.; also against Geo. E. Tewksbury and Victor H. Emmerson of Newark, N.J., Augustus N. Sampson

AM. G. CO. cont. (2)

and A. P. Martin of Boston, Mass., James L. Andem of Cincinnati, Ohio, Thomas R. Lombard and E. S. Gresser of Chicago, Ill., and other suits will follow as rapidly as the circumstances permit.

Yours truly,

AMERICAN GRAPHOPHONE COMPANY.

By. E.D. Easton

Vice-Prest. and General Manager

RA B's Exhibit 4

COPY.

Sept. 14, 1894.

John R. Hardin, Esq.,

Recvr. of the North American Phonograph Co.,

Newark, N. J.

Dear Sir :-

As a stockholder of the North American Phonograph Co., it is my desire to investigate carefully, so far as possible, the management of that Company with the view to protecting the rights of the stockholders. I therefore respectfully request you to assist me in getting the following information:-

I wish a list of the present stockholders of the Company with their addresses and the quantity of their holdings.

I wish a copy of the minutes of the Board of Directors showing the alleged authorization of the issue of 330 bonds of the Company and of a promissory note to Thomas A. Edison with 1200 shares of the capital stock of the Edison Phonograph Co. as collateral security.

I am also in search of information regarding the basis of the ~~alleged~~ debt for which the bonds in question were issued and the debt alleged by the bill of complaint in the action in which you were appointed receiver of the Company to be owing to Thomas A. Edison and to the Company which had the contract for manufacturing phonographs.

I would be glad to have a statement of the assets and

J.R.H. -2-

alleged debts of the Company as ascertained by you, and to know what has been done by you in the management of the Company's assets and the payment of any of its alleged debts.

On January 20th, 1890, Mr. Jesse H. Lippincott wrote in a circular letter addressed to Spencer, Trask & Co., 16, 18 Broad St., N. Y. City, "in accordance with a contract made between this Company and Mr. Edison, he is to devote a portion of his time during the life of the patents to the further development of the phonograph". I desire to know the terms of the contract in question and whether Mr. Edison has complied therewith.

Mr. Lippincott further stated in the aforesaid letter "all improvements made are to accrue to the benefit and will become the property of this Company". I desire to know what improvements, if any, were thereafter made and whether they accrued to the benefit of the Company and became its property.

Mr. Lippincott further stated in the aforesaid letter "the Company will also receive the benefit of any improvements in the graphophone made by any experts in the employ of the American Graphophone Co". I desire to know whether any improvements were made thereafter in the graphophone, and whether the benefit of them accrued to the North American Phonograph Co.

Mr. Lippincott further stated that the North American Phonograph Co. had theretofore received in cash \$828.267, and was

1
J.R.H.-3-

to receive a further sum of \$283,733 in payment of exclusive licenses in the respective territories granted to the various sub-companies running five years, and in addition was to receive from trustees who now hold the securities for the benefit of this Company \$1,400,000 of the stock of the sub-companies. I wish to know what disposition was made by the North American Phonograph Co. of the said sum of \$328,267; whether it received the further sum of \$283,733, and if so, what disposition was made of it; whether it received the \$1,400,000 stock mentioned in the said letter, and if so, what disposition was made of it.

Mr. Lippincott further stated that there was to be deposited with the Central Trust Co., trustee, to be delivered to the North American Phonograph Co. at the end of five years, stock in the various local companies to the amount of \$4,100,000. I wish to know whether this deposit was made, and if so, what has become of it.

I wish to know the names of the minor companies referred to in Mr. Lippincott's letter, and how many are still in existence.

The said letter further stated that 6,000 shares of the Company's stock had been put into the hands of trustees for the future use and benefit of the Company, if needed. I wish to know the names of the said trustees, and whether they have made any disposition of the said 6,000 shares of stock, and if so, what disposition.

J.R.H.-4-

Mr. Lippincott further stated "it is expected that this Company will realize a handsome sum from the formation of the sub-companies in Canada". I wish to know whether a sub-company was formed, and if so, what this company realized from its formation.

An examination of the allegations of the bill of complaint and the statements made in Mr. Edison's affidavit accompanying it are so utterly at variance with the prospects indicated in Mr. Lippincott's letter that I am of the opinion that the conduct of the affairs of the Company since the date of Mr. Lippincott's letter demands the very closest scrutiny, and I am willing to make the examination required provided you furnish me at such reasonable hours as may be named by you, with the facilities for acquiring the information which I desire so far as they lie in your power.

Your kind attention and early reply will greatly oblige,

Very truly yours,

Charles A. Boston

C. A. Boston

John R. Hardin,
Counsellor at Law,
Newark, N. J.
Prudential Building,
761 Broad St.

September 15th, 1894.

Charles A. Boston, Esq.,
Counsellor at Law,
66 Broadway,
New York City.

My Dear Sir:-

In the absence of Mr. Hardin, who has gone to Chicago, but will return on Monday next, I have opened your letter of Sept. 14th inst., addressed to him on the subject of your proposed investigation into the management of the affairs of the North American Phonograph Co. Mr. Hardin will see your letter upon his return and will doubtless answer the same with respect to the inquiries that you have made therein.

Yours very truly,

Oscar Keen,

for John R. Hardin.

C. A. B. Exhibit "6"

John R. Hardin,
Counsellor at Law/
Newark, N.J.
Prudential Building,
761 Broad St.

September 17th, 1894.

Messrs. Baldwin & Boston,
Counsellors at Law,
66 Broadway,
New York City.

Gentlemen:

On my return from Chicago this morning, I find your favor of the 14th inst. concerning the affairs of the North American Phonograph Company. I am willing to furnish you every facility that a stockholder is entitled to to investigate the affairs of the Company. I myself am yet ignorant of some of the questions suggested by you, but am endeavoring to pick up the history of the Company as rapidly as I can procure the contracts and documents containing it. I will answer your letter, so far as I am able, at as early a day as I can.

Yours truly,

John R. Hardin, P.

25
IN CHANCERY OF NEW JERSEY.

Between Walter T. Cutting, Ex-
ecutor &c., and others,
Complainants,

and

The North American Phonograph
Company,
Defendant.

Answer of M. W. Nolan to
Petition of Receiver,
and Cross Petition.

ans. 64
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69

Printed matter not estimated

Filed April 18th 1895

Allan McDermott *ck*

Copy for John E. 26 id no

COPY SENT OCT 11 1900 J.E. Helm

Case No 33, - 414

-----X
BETWEEN WALTER T. CUTTING, EXECUTOR, &c.
and others,

Complainants,

and

THE NORTH AMERICAN PHONOGRAPH COMPANY,
Defendant.
-----X

ON BILL &c.,
ANSWER OF M.W. NOLAN
TO PETITION OF RE-
CEIVER AND CROSS-PETITION.

The Answer and Petition or Cross-Petition of Michael W. Nolan, of the City of Brooklyn, County of Kings and State of New York, to the Petition and Report of Sale of John R. Hardin, Receiver in this cause, respectfully shows unto his Honor the Chancellor of New Jersey:

FIRST:- That he is the holder and owner of \$25,000. of the bonds of the North American Phonograph Company and has proved his claim as creditor of said Company.

SECOND:- Your petitioner prays that the sale reported by said Receiver to Thomas A. Edison shall not be confirmed or allowed to take place, and for reasons therefor he shows that the title of the assets of said Company has not been so determined as to make a fair sale possible; and that the methods adopted in advertising said sale were improper and misleading and of such a nature as to discourage rather than induce bids for the property.

That by sale in the manner proposed the Company's plant and assets for the purpose of carrying on business are not sold as an integral whole, but that an important and essential part thereof has been omitted from such sale and that the sale has been so attempted to be made that only the said

Edison could be a bidder thereat and that the sale in the manner proposed would, in other respects, be unjust to the creditors of said Company and inequitable.

THIRD:- Your petitioner further shows to your Honor that the assets of the North American Phonograph Company, hereinafter termed the Insolvent Company, consisted of various patents and patent rights of the United States and Canada relating to speaking machines and appliances therefor, which patents and patent rights were mostly obtained at various times during a series of years by the said Thomas A. Edison and have been combined and used in the machines manufactured by or for said Insolvent Company and known as phonographs, so that said manufacture of said machines required the use and control of all of said patents and not a part thereof, and no part of said patents could be safely or properly sold away from said Insolvent Company without destroying its business and plant of operations, and its ability to exploit the machine known as the Phonograph.

And your petitioner shows that during the solvency of said Insolvent Company the said patents were held as follows, that is to say: the earlier patents were held in the

name of the Edison Phonograph Company, a New Jersey corporation, whose stock had been sold and delivered to the Insolvent Company by the said Thomas A. Edison, whereby, and by means of the ownership of said stock only, the said Insolvent Company obtained and controlled the right to the use of said patents. That it was intended that the patents so held by said Edison Phonograph Company should be finally transferred to said Insolvent Company, but that meanwhile said Insolvent Company had

2
become indebted to the said Thomas A. Edison in the sum of \$78,518.37 and had pledged said stock to the said Thomas A. Edison as security therefor. That the later patents had been taken out and issued to said Thomas A. Edison for the use and benefit of the Insolvent Company upon the express understanding and agreement that said Edison should transfer said patents to the Insolvent Company by proper assignments when requested so to do. That the said Thomas A. Edison was the President of said Insolvent Company for a long time prior to the time of the filing of the bill in this cause and at the time of such filing and he was also bound to said Insolvent Company by irrevocable contract to give his time and services to the improvement and patenting of improvements in the phonograph, as shown in the contracts hereto annexed marked "A" and "B". And your petitioner shows that thereby the whole of the patents upon the said phonograph were fully under the control of the said Insolvent Company as well as the services of the said Edison, the inventor of said phonographs.

And your petitioner shows that although the said Edison had the right to payment of the said sum so owed to him by the Insolvent Company and for which he held as collateral security the stock of the Edison Phonograph Company, the owner of part of said patents, that he was nevertheless in equity, as President of said Insolvent Company and agent of said Company, bound so to administer his said lien as that it should not destroy the rights of the stockholders and other creditors of the said Insolvent Company.

FOURTH:- And your petitioner shows that all said patents constituted but one plant; that no part thereof could be sold

separate from the other without destroying the plant and without destroying the business and the ability to manufacture and exploit the machine for which said business was constituted; and that it was the duty of said Edison, in case of the insolvency of the said Insolvent Company of which he was President and agent and with which he had such contracts, to allow and procure such administration of its assets as that an opportunity should be given for its continuous administration as a complete and integral plant and for its disposition as such plant to some purchaser who would take it as such, subject to the liens thereon, including the lien of said Edison upon the stock of the Edison Phonograph Company pledged to him as aforesaid.

Your petitioner further shows unto your Honor that nevertheless, when said Insolvent Company became insolvent and unable to pay its debts and immediately prior to the filing of the bill in this cause, the said Edison took immediate means to attempt to sever part of said patents from said plant, so that he might have control of all the assets of said Insolvent Company and prevent any one else from obtaining any such control; that is to say, about the 13th day of August last he caused all of said stock of the Edison Phonograph Company so pledged to him for said debt to be sold at the Court House in the City of Jersey City. Your petitioner shows that as he is informed and believes not over one day, if any, notice was given to the public of said sale; that a few days' notice was given to the Insolvent Company, but that said Insolvent Company was then known to said Edison to be insolvent and unable to take care of its assets, and that said Edison himself became

the purchaser at said sale of all of said stock of the Edison Phonograph Company and thereupon and thereafter claimed to own all of the patents held by said Edison Phonograph Company.

Your petitioner shows that thereupon, within less than ten days thereafter, the said Thomas A. Edison caused the bill in this suit to be filed; that the same was not filed in his name but that his affidavit is annexed thereto verified August 15th, 1894, two days after such sale, to which reference is prayed, setting forth that the business of manufacturing phonographs was an entire failure. Your petitioner shows that if said business was a failure it was entirely because the said Edison had failed to devote his energies to the improvement of the phonograph as provided in his agreements, "A" and "B", or else because he had failed to communicate to said Insolvent Company the improvements made by him. And your petitioner shows that by reason of the alleged sale of said stock of the Edison Phonograph Company it had become absolutely impossible for the Insolvent Company to carry on business; that no phonographs could be manufactured and no business carried on without all the patents, both those owned by the Insolvent Company and those owned by the Edison Phonograph Company, and controlled by the Insolvent Company as aforesaid.

FIFTH:- And your petitioner shows that he was advised and is advised by counsel, and that said Receiver was likewise advised, and duly notified that the said sale made to said Edison by himself of the stock of said Edison Phonograph Company was inequitable and void in equity; that neither as President nor as agent of said Insolvent Company could he make such sale, knowing said Insolvent Company to be insolvent, except

under the orders of this Court and upon proper marshaling of the assets of said Insolvent Company; that he could not, as such President and agent, take an adverse position to said Insolvent Company. And your petitioner is further advised and shows that said Receiver is likewise advised and notified that said alleged or attempted sale is likewise illegal and void as being made without proper notice to the creditors and stockholders of said Insolvent Company and to the public; that it was well known to said Edison that said Insolvent Company was insolvent and that this Court would not permit said Edison, by any such contrivance, to obtain title by bidding at his own sale, made under his own power of attorney, for his own benefit, under any circumstances and particularly not while he still remained the President and agent of said Insolvent Company, and that his purchase must be taken in every respect to have been made for the benefit of said Insolvent Company.

SIXTH:- And your petitioner shows that said position relative to the stock of the Edison Phonograph Company and the sale thereof by said Edison has been heretofore distinctly taken by the Receiver in this cause, and he includes herein said Receiver's statement of his said position, made in answer to the petition of the New England Phonograph Company, as follows, that is to say:

"10.- And this respondent further answering supposes
"that the stock referred to as having been deposited as collateral by the North American Phonograph Company to secure
"Thomas A. Edison for certain indebtedness due to him by the
"North American Phonograph Company was the stock of the Edison
"Phonograph Company, which corporation was the owner of cer-

"tain patents connected with the phonograph. And this respondent admits that such collateral was sold at public auction, and was purchased by the said Thomas A. Edison, but this respondent does not admit that said sale was lawfully made or that by said sale the said Edison acquired any rights in the said phonograph patents to the exclusion of the rights of the North American Phonograph Company therein."

"And this respondent denies that the North American Phonograph Company has lost all, or substantially all, the rights to the exploitation of graphophones and phonographs and is wholly unable to carry out either of the contracts made by it with the New England Phonograph Company for reasons other than its insolvency, but on the contrary this respondent asserts the truth to be that the said North American Phonograph Company or its Receiver is still entitled to all the interest in the said graphophones, phonographs and supplies for the same and improvements on the same that are mentioned or are intended to be mentioned in the contracts hereinabove referred to, and that the said North American Phonograph Company, and since its insolvency, this respondent as Receiver, has, continuously and without interruption, carried out the terms of the said contract, and has continued to supply to the New England Phonograph Company, and to all persons wanting the same, all phonographs and phonograph supplies that the said New England Phonograph Company or the said North American Phonograph Company has been, at any time since the organization of said Company, accustomed to supply customers thereof, and this respondent asserts that the said interest in said patents and the right to do business pursuant

"to the contracts hereinabove referred to comprised part of
"the assets of the North American Phonograph Company in his
"hands as Receiver, and that he has carefully preserved the
"same, and that any purchaser from this respondent as Receiver
"could take the said patents and contracts and continue the
"business conducted by the said North American Phonograph Com-
"pany at the time of its insolvency, and that the only reason
"that the said the North American Phonograph Company failed to
"continue said business was because of its insolvency, but
"that such insolvency has worked no harm or inconvenience to
"the New England Phonograph Company or to any other corpora-
"tion or person concerned in the manufacture, use or sale of
"the phonograph."

SEVENTH:- And your petitioner further shows unto your Hon-
or that under the circumstances aforesaid it became and is the
duty of the Receiver in this cause and of this Court, in order
to make a proper sale of the assets of said Insolvent Company
as a whole and in order to license or allow any proper bidding
upon said property, to settle the question whether said Edison
has foreclosed all rights of the Insolvent Company in the
stock of the Edison Phonograph Company, or at least to sell as
part of its plant and as the single plant to be exposed to
sale all rights of the said Insolvent Company and all rights
to object to said sale by said Edison and to redeem said stock
from said alleged foreclosure. And your petitioner shows that
numerous parties are interested in bidding upon the whole
plant of the Insolvent Company. That the American Graphophone
Company is represented by men of large capital, who, as your
petitioner is informed and believes, have always desired to

obtain the plant and patents of the North American Phonograph Company; that the Edison United Phonograph Company is represented likewise by men of large capital, including the firm of W. & J. Seligman, bankers, who hold both the rights of the graphophone and phonograph abroad and have always, as your petitioner is informed and believes, been anxious to control the business of the phonograph in the United States so as to prevent rivalry between machines manufactured and sold in the United States and machines manufactured for sale abroad, and that their interest in the matter is shown by suits in this Court.

And your petitioner shows that therefore, in his judgment, there would be much competition at any proper sale of the whole plant of the Insolvent Company wherein title to its patents was offered freed from cloud and that it was the duty of the Receiver in this cause, before exposing said property to sale, to free said title from such cloud, so as to obtain such bidders.

EIGHTH:- But your petitioner shows to your Honor that no such proceedings were taken, and moreover, that the said Receiver failed to expose to sale the whole of the assets and plant of said Insolvent Company. Your petitioner annexes hereto a copy of the Receiver's advertisement of sale, marked "C", and he shows that, although the said Receiver as aforesaid claimed that he was still entitled to the stock of the Edison Phonograph Company subject only to the lien of said Edison for his said debt, and which stock represented and gave control to a large number of the principal phonograph patents, nevertheless the said Receiver did not in anywise advertise even his

claim upon said stock or right of redemption thereof for sale, and your petitioner shows that it would be most politic and proper that the Receiver's title to said stock should be settled before any such sale should be made, but that even if the same were not settled that, nevertheless, his title thereto ought to be sold in order to convey anything like a plant for the manufacture of phonographs; that the patents advertised by him for sale are merely subsidiary patents, showing improvements but not covering the main patents under which the phonograph is made; that neither the patents held by the Edison Phonograph Company nor the patents taken by said Edison for the benefit of the Insolvent Company can be used by themselves alone in the present state of the art in the manufacture of a perfected machine, but that both must be used together. And your petitioner shows that the pretended sale to said Edison of the stock of the Edison Phonograph Company with the pretended control of the patents owned by that Company was a mere device by which said Edison became alone able to bid upon the remaining patents in the hands of the Insolvent Company, of which he was president and trusted agent, while no one else was able to bid against him because he only could obtain by purchase a perfect plant.

NINTH:- Your petitioner further shows unto your Honor that by the petition of said Receiver, under the sections entitled from 19 to 22, it is proposed that said Thomas A. Edison shall actually retain from his bid 83 per cent. thereof as an advance dividend on account of his alleged claims and debts due him by the Insolvent Company and shall give merely personal security to this Court to guard against the establishment

est in the several phonograph patents other than those which are held by the Edison Phonograph Company is so indefinite and uncertain that it is impossible for any intending purchaser to intelligently advise himself on the subject. That said Receiver at the time of advertising said proposed sale had in his possession and under his control a list of the various patents that had been issued upon the inventions of said Thomas A. Edison for the machine known as the phonograph and that it was possible for the Receiver to have designated such patents by number and with a brief description on the subject matter thereof.

That immediately upon receiving said notice of sale your petitioner, through his counsel, communicated with said Receiver, calling his attention to the fact that such patents and interests in patents as he had the right to sell were improperly referred to and that the description thereof was too indefinite and uncertain and further notified said Receiver that your petitioner would insist that he, as such Receiver, should sell by and under a notice describing each patent by its number and by some brief description and statement to the effect that he offered for sale all the right, title and interest of the Insolvent Company in and to each and every one of such patents. That said Receiver answered your petitioner to the effect that while he had in his possession a complete list of all the patents in which he believed the Insolvent Company had an interest that could be made the subject of sale by him as such Receiver, nevertheless that he preferred to offer the patents in this way in view of the fact that much litigation was pending respecting the patents, or some of them,

of other claims already proved in this cause to the amount of over \$275,000. And your petitioner shows that, as claimant against said Insolvent Company of at least equal standing with the said Edison, he remonstrates against the preference of said Edison in payment of his claim before the payment of your petitioner's claim, and he would likewise remonstrate if said pretended sale to said Edison were to be carried through. But your petitioner shows to this honorable Court that the equitable and proper disposition of the assets of said Insolvent Company demands that they shall be administered as a whole and as an integral plant for the manufacture of phonographs and that to that end proceedings should be taken by said Receiver to obtain a decree of this Court setting aside said pretended sale of part of said plant to said Edison, the President and trusted agent of said Insolvent Company, and decreeing that as such he could not obtain, without notice and without proper proceeding and by purchase at his own sale, a title against the Insolvent Company upon part of the assets thereof, and that it is his duty as such agent and President to submit said assets to the administration of this honorable Court so that the whole plant may be disposed of in its entirety to the best advantage of the Insolvent Company, reserving to said Edison

only such proper lien and remedy therefor as shall be consistent not only with the payment of his debt but with the making of the largest amount for the creditors and stockholders of the Insolvent Company.

TENTH:- Your petitioner further shows that the notice of sale prepared by said Receiver and under which he claims to have sold and intends to convey to Thomas A. Edison the inter-

and that he might be called upon to pass upon or settle conflicting claims which by this means he could avoid, leaving such controversies to whoever might become the purchaser. That the position so assumed by said Receiver, your petitioner respectfully submits, was improper and illogical, greatly to the detriment and damage of your petitioner and all creditors of the Insolvent Company other than Mr. Thomas A. Edison, and that the interest of said Edison could have been no better served in the arrangements for such sale than by avoiding such detail as was suggested by your petitioner, as the said Edison by reason as aforesaid is thereby given a great advantage over all others who might desire to compete if the sale were made in a proper and equitable manner.

That a like demand, on behalf of your petitioner, was made of said Receiver respecting all of the patents of the American Graphophone Company, a complete list of all of which had been by your petitioner, through his counsel, furnished to said Receiver immediately after his appointment. That the answer of said Receiver to the request of your petitioner in the matter of the Graphophone patents was substantially the same as that given in regard to the so-called Edison patents. That as to all of the several patents, both Graphophone and Phonograph, concerning which information was furnished to said Receiver by your petitioner, through his counsel, a printed pamphlet is hereto annexed, marked "D", the same being a duplicate of the pamphlet furnished by your petitioner to said Receiver. That as to all of the patents not covered by said pamphlet said Receiver has informed your petitioner's counsel that he has in his possession official reports or searches

from the Patent Office in Washington.

ELEVENTH:- And your petitioner says and charges that while it may not be necessary to determine the rights of sub-contractors and sub-companies as respects the North American Phonograph Company, because their rights are merely by contract and attach to the proceeds of the property of the North American Phonograph Company when sold, nevertheless it is necessary and the practice of a Court of Equity to determine the title of said property before said sale, and when said title is held in the name of someone else, as for instance, in the name of said Edison, to determine whether or not the same should be sold as the property of the Insolvent Company before attempting such sale.

TWELFTH:- And your petitioner shows that if as it is stated in the ninth clause of said petition of said Receiver said Edison has taken out numerous patents which really belong to the Insolvent Company under his contract with said Insolvent Company and to said Receiver, but that their right thereto is disputed and has never been definitely ascertained, then according to the Receiver's own showing it is only equitable and proper that said rights should be ascertained and said dispute removed before attempting to sell said patents.

Your petitioner therefore prays that said pretended sale to said Thomas A. Edison may not be confirmed but that said Receiver may be directed immediately to take proceedings to establish his title to the said stock of the Edison Phonograph Company as against the said Thomas A. Edison, subject only to the said debt to the said Thomas A. Edison, the amount thereof to be settled by this Court, and also to obtain such order

staying all proceedings of the said Thomas A. Edison for the enforcement of his said debt until said title is determined and that said Receiver may be directed to administer the assets of said Insolvent Company as a whole so far as the same constitute one single plant as may be agreeable to equity and good conscience and may tend to obtain the best possible price therefor, and allow a competition where other parties may come in and bid for the property offered upon the same footing as said Edison.

And your petitioner further prays that when any distribution of the proceeds of any sale made by said Receiver or of the assets of said Insolvent Company shall be ordered by this Court then that your petitioner shall be treated upon the same basis as said Edison or any other creditor and that if any sale should be made to the said Edison by said Receiver then that the said Edison shall be compelled to comply with the terms thereof in the same manner as any other individual and that the rights of your petitioner shall not be left to the jeopardy of future litigation and the security of a personal bond furnished by said Edison by virtue of a special and particular arrangement made after the time for bids had expired and in direct violation of terms of sale as proposed.

And your petitioner further prays that he may have such other or further order or relief in the premises as in law and equity and the practice of this Court he may be entitled to receive.

And your petitioner will ever pray, &c.

Dated, Jersey City, N. J., April 8th, 1895.

Michael W. Nolan
Petitioner, &c.

STATE OF NEW JERSEY)
CITY OF JERSEY CITY : SS.
COUNTY OF HUDSON.)

Michael W. Nolan, being duly sworn according to law, upon his oath says: That he is the Michael W. Nolan named in the above answer and cross-petition and that the matters and things therein contained are true to the best of his knowledge, information and belief.

This deponent further says that he is creditor of the Insolvent Company as above stated to the amount of more than the sum of \$25,000.; that he was a Director of the said Company at the time of its insolvency and that said Edison was President; that the contracts marked "A" and "B" are truly stated and were in force at the time of said insolvency.

Deponent further says that the statements of said petition and answer with reference to the sale of the stock of the Edison Phonograph Company by said Edison are truly stated therein. That said sale was had when said North American Phonograph Company was known to said Edison to be absolutely insolvent and unable to pay its debts. That the same was made under a notice given by said Edison and without any judicial proceedings whatsoever and was as this deponent believes bought by him under his own sale for his own debt.

Deponent further says that he has been interested in the phonograph business since 1888 and that he knows that men of wealth have been desirous to obtain the plant and patents formerly controlled by the said Insolvent Company. That the said patents are useful and valuable only as a whole and as representing the perfected machine. That part of said patents are held in the name of the Edison Phonograph Company, as

stated in said petition, and the other part for the benefit of
the North American Phonograph Company.

Sworn and subscribed to)
before me this Eighth day)
of April, 1895.)

Michael W. Nolan

Michael D. Dwyer
Master in Chancery
J. A. J.

Enrolled at here

"a"

AGREEMENT.

THOMAS A. EDISON

WITH

THE NORTH AMERICAN PHONOGRAPH COMPANY

AND

JESSE H. LIPPINCOTT.

AUGUST 1, 1888.

Agreement, made this 1st day of August, 1888, by and between THOMAS A. EDISON, of Llewellyn Park, in the State of New Jersey, party of the first part, and THE NORTH AMERICAN PHONOGRAPH COMPANY, a corporation organized and existing under the Laws of the State of New Jersey, and JESSE H. LIPPINCOTT, of the City and State of New York, parties of the second part.

WHEREAS, The party of the second part has been organized with the view of exploiting and introducing commercially the Phonograph and has acquired the necessary rights and authority so to do; and

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AGREEMENT.

THOMAS A. EDISON

WITH

THE NORTH AMERICAN PHONOGRAPH COMPANY

AND

JESSE H. LIPPINCOTT.

AUGUST 1, 1888.

Agreement, made this 1st day of August, 1888, by and between THOMAS A. EDISON, of Llewellyn Park, in the State of New Jersey, party of the first part, and THE NORTH AMERICAN PHONOGRAPH COMPANY, a corporation organized and existing under the Laws of the State of New Jersey, and JESSE H. LIPPINCOTT, of the City and State of New York, parties of the second part.

WHEREAS, The party of the second part has been organized with the view of exploiting and introducing commercially the Phonograph and has acquired the necessary rights and authority so to do ; and

WHEREAS, Jesse H. Lippincott has acquired the right to exploit and introduce an instrument known as the Graphophone ; and

WHEREAS, The said company and the said Lippincott possessing the right to introduce both instruments, intend placing them upon the market together, leaving to the public the right to make their own selection in buying or renting instruments.

Now it is agreed as follows:

FIRST: The Phonograph shall be put on the market under the name of the Phonograph. The instrument now known as the Graphophone shall be put on the market under the name of the Phonograph-Graphophone. The said company and the said Lippincott shall do their utmost to introduce both instruments, and shall in no way press the introduction of one at the expense of the other, nor permit or allow its officers, agents or employees to favor one more than the other.

SECOND: The price to the public for either purchase or rental of each instrument complete, including one cylinder means for driving the instrument, whether by electric motor, clockwork, or foot power, or otherwise, shall be the same, provided that the selling price of each of said instruments to the public shall not be over one hundred dollars or the rental shall not be over forty dollars per annum, and the discounts and commissions in selling or renting each shall be the same, and each instrument shall be sold and rented on the same terms of payment.

THIRD: In order that no misunderstanding shall occur as to what is a Phonograph and what a Phonograph-Graphophone, an instrument previously marked "Phonograph, T. A. Edison," and now in the possession of The North American Phonograph Company is to be taken as a standard Phonograph, and an instrument previously Marked "Pho-

nograph-Graphophone, C. S. Tainter," and which is now in the possession of T. A. Edison, is to be taken as a standard Phonograph-Graphophone. None of the parts or features of construction of one instrument shall be hereafter applied to or used on the other, but each shall remain as it now is, as illustrated by the instruments marked, except in so far as each may be improved by patented inventions, but any patented invention of Mr. Edison, improving the Phonograph shall not be applied to or used on the Phonograph-Graphophone, nor shall any patented invention owned or controlled by the Volta Graphophone Company improving the Phonograph-Graphophone, be applied to or used on the Phonograph, it being the intention hereof that each instrument shall remain distinct, and shall not be improved by the use of parts or features of construction of the other.

FOURTH: Any invention or improvement made by the said Edison within fifteen years from the date hereof upon the Phonograph, as it now exists, shall be assigned to the company without further compensation. But any invention made by the said Edison, within fifteen years from the date hereof, relating to a special Phonograph or special extra for the Phonograph, which is sold as an extra, such as the manufacture of duplicate records of music, novels, &c., or any invention by which the use of the Phonograph is enlarged, or by which it is adapted to uses other than those for which it is now available, shall be assigned to the company, and the company shall pay to the said Edison a royalty of fifteen per cent., computed on the manufacturer's price to the company of every special Phonograph, special extra, duplicate records or apparatus embodying the invention by which the use of the Phonograph is enlarged or by which it is adapted to uses other than those for which it is now available, as the case may be. Clocks to be exempted from all contracts. All patents issued on said invention shall belong to the company and all expenses of procuring the same shall be paid by it. No new patented invention of the said Edison assigned or assignable to the company hereunder shall be

used on or sold with the Phonograph-Graphophone, and no new patented invention owned or controlled, now or hereafter by the Volta Graphophone Company, shall be used upon or sold with the said Phonograph.

FIFTH: In order that the said Edison may conduct experiments looking towards the improvement of the Phonograph the company shall allow him to draw, for experimental expenses for the first year from the date hereof, fifteen thousand dollars; for the second, ten thousand dollars; for the third, seventy-five hundred dollars, and yearly, for ten years thereafter, five thousand dollars. These expenses to be paid upon vouchers showing actual net cost, with no profit to the said Edison or any company in which he is interested.

SIXTH: If the company should, at any time, be sued or threatened with a suit by any person claiming that any part or feature of the Phonograph infringes patents issued to any person other than the said Edison, or upon any invention alleged to have been made by another, the said Edison shall have the right, by his own counsel and at the company's cost, to participate in the defense of such suit.

SEVENTH: The company shall not sell Phonographs for use in countries other than the United States and Canadas, nor interfere in any way with the foreign business of the said Edison. The said Edison is also to have the exclusive right in perpetuity to manufacture Phonographs and all supplies therefor for export.

EIGHTH: All Phonographs shall have placed upon them such marks, numbers, dates of patents as, in the opinion of counsel to be selected by Jesse H. Lippincott, may be necessary for the protection, under the law, of all the patents owned or controlled by the Edison Phonograph Company and the Volta Graphophone Company.

NINTH: This contract is predicated upon the assumption that all the provisions of a contract entered into between the

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said Edison and Jesse H. Lippincott, dated the 28th day of June, 1888, have been or will be carried out. In case the said Lippincott should fail to pay to the said Edison the five hundred thousand dollars, as in said contract provided, this contract shall be null and void.

In witness whereof, the parties have set their hands and seal the day and year first above written.

Witness as to Lippincott: } THOMAS A. EDISON, [L. S.]
J. ADRIANCE BUSH. } JESSE H. LIPPINCOTT. [L. S.]

[SEAL.] THE NORTH AMERICAN PHONOGRAPH CO.,
JESSE H. LIPPINCOTT, Prest.

Attest:
GEO. H. FITZWILSON,
Secy.

[23960]

B^a

AGREEMENT

BETWEEN

JESSE H. LIPPINCOTT

AND

THOMAS A. EDISON.

JULY 30, 1889.

Agreement made this 30th day of July, 1889, between
JESSE H. LIPPINCOTT and THOMAS A. EDISON.

WHEREAS, the said Lippincott is largely interested in a certain corporation known as the North American Phonograph Company, and for the purpose of increasing the value of stock of the Company, and thereby increasing the value of the said Lippincott's holdings thereof, he desires to make certain arrangements with the said Edison as set forth below, whereby the said Edison will promptly and continuously devote a certain portion of his time to inven-

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AGREEMENT

BETWEEN

JESSE H. LIPPINCOTT

AND

THOMAS A. EDISON.

JULY 30, 1889.

Agreement made this 30th day of July, 1889, between
JESSE H. LIPPINCOTT and THOMAS A. EDISON.

WHEREAS, the said Lippincott is largely interested in a certain corporation known as the North American Phonograph Company, and for the purpose of increasing the value of stock of the Company, and thereby increasing the value of the said Lippincott's holdings thereof, he desires to make certain arrangements with the said Edison as set forth below, whereby the said Edison will promptly and continuously devote a certain portion of his time to inven-

tions and improvements in phonographs, for the benefit of the said Company :

Now, Therefore, in consideration of the premises and also the sum of One dollar in hand paid by each of the parties hereto to the other, the receipt whereof is hereby acknowledged, it is agreed as follows :

FIRST:—Whereas a certain contract, dated August 1, 1888, has heretofore been made by and between the said Edison, the said Lippincott, and the said North American Phonograph Co., whereby in the fourth section thereof, the said Edison agreed to assign to the said Company without further compensation any invention or improvement made by him within fifteen years from the said August 1, 1888, upon the then existing phonograph ; and whereas, the said Lippincott desires to interest the said Edison largely as a stockholder in the said Company, so that it will be for his greater personal advantage and benefit to make inventions and improvements as aforesaid, whereby not only will the general value of the stock of the said Phonograph Company be increased but the holdings of the said stock owned by the said Lippincott and the said Edison, severally, will also correspondingly increase in value ; and whereas, on the urgent request now made by the said Lippincott and for the purpose of benefitting him individually, as above set forth, the said Edison is willing to take a prompt and active interest in making such inventions and also to agree to give a certain specified part of his time thereto : Now, Therefore, the said Edison hereby agrees that in addition to the time which he has already devoted since the date of the said contract of August 1, 1888, to inventions and improvements in phonographs, he will give such a further amount of time thereto, that the total time thus given by him to such inventions and improvements, between August 1, 1888, and August 1, 1890, shall amount to substantially one half of his entire time, and he further agrees that for at least three

years thereafter, that is to say, until August 1, 1893, he will make the said subject of inventions and improvements in phonographs a matter of regular and assiduous thought and experiment so far as he can reasonably do so without interfering with his other engagements and duties, it being, however, distinctly understood that nothing herein contained shall entitle the said Edison to make any claim against the said Lippincott for any remuneration touching either services or outlay in connection with his said efforts, save and except as herein provided for.

SECOND:—Whereas, in the various agreements heretofore made by and between the said Edison and the said North American Phonograph Co., whereby the latter Company has acquired all of the certain inventions heretofore made by the said Edison in phonographs, no provision has been made for the acquiring by the said Company of any inventions or improvements made by him between the dates of July 17, 1888, and August 1, 1888, which omission it is now intended by this instruments to provide means of correcting, the said Edison hereby agrees that he will at any time hereafter when requested to do so by the said Lippincott, execute such customary instrument of assignment as may be necessary to give to the said North American Phonograph Co. the said rights to acquire his inventions and improvements relating to phonographs made between the said dates of July 17, 1888, and August 1, 1888, as they have already acquired prior and subsequently to the said dates.

THIRD:—Whereas, the said Edison has heretofore given the said Lippincott the benefit of valuable advice and suggestions in connection with the formation and promotion of the said North American Phonograph Co., which services the said Lippincott desires to recognize and of his own accord to voluntarily compensate the said Edison adequately therefor; Now, Therefore, in consideration thereof, and as further consideration for the promises herein made by the

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said Edison in the two preceding paragraphs of this instrument, the said Lippincott hereby agrees that upon the execution of this agreement by Mr. Edison, he will hand and deliver to the said Edison a certificate of fully paid stock of the North American Phonograph Co., in the name of the said Edison, to the amount of 6,100 shares thereof, that is to say of the par value of \$610,000., and Mr. Edison hereby acknowledges the receipt of said certificate, to wit, certificate No. _____, dated _____ 1889, for 6,100 shares as aforesaid, made out in the name of the said Edison.

FOURTH:—It is agreed that the said Edison receives the aforesaid 6,100 shares of stock on the following conditions, to wit:

(a) It is the intention of the said Lippincott to publicly offer for sale within the next four or five months enough of the capital stock of the said North American Phonograph Co. to realize in cash from the sales thereof at least the sum of \$1,000,000., on or before December 31, 1889.

(b) The said Lippincott has not yet decided at what price he will offer the said stock to the public as aforesaid, but it is assumed for the purposes of this agreement, that the price will not be less than \$25. per share.

(c) If the said stock is not offered in public in the customary manner touching what is known as bringing out companies, prior to December 31, 1889, or if before that date the said stock is offered in public as aforesaid, at a less average price than \$25. per share, or if enough of the said stock be not sold by the said Lippincott on or before December 31, 1889, to realize in cash by that date the sum of \$1,000,000., then, that is to say, in either of the said three events, the said Edison shall on December 31, 1889, acquire the absolute ownership of

the said 6,100 shares of stock, as his own personal property free and clear of any and all claims on the part of the said Lippincott or of any person claiming under or through him, and in the event of the said stock being offered to the public as aforesaid at a less average price than \$25. per share, the said Lippincott shall on or before December 31, 1889, give to the said Edison an additional amount of the said stock to the end that the said Edison may have and possess such a number of shares which valued at the aforesaid average selling price of less than \$25. per share, shall aggregate \$152,500.

(d) If the said stock is prior to December 31, 1889, offered to the public at a price averaging in excess of \$25. per share, and if enough of the said stock is purchased by public subscription or otherwise so that the net proceeds thereof received by the said Lippincott, between Dec. 1, 1888, and December 31, 1889, shall aggregate in cash at least \$1,000,000., the said Edison will return the said Lippincott a certain portion of the said 6,100 shares of stock, the said proportion to be determined as follows, to wit: The sum of \$152,500. shall be divided by the said average price at which the said stock is offered to the public as aforesaid, and the quotient resulting from the said division shall represent the number of shares which said Edison shall be allowed to retain and possess as his own, and the balance shall be returned to the said Lippincott, that is to say, for illustration, if the subscription price to the public should be at the average rate of \$90. per share, and the said subscription should be paid for to the aggregate amount of \$1,000,000. in cash within the aforesaid limited time, by December 31, 1889, the said Edison shall retain 1,694 shares of the said stock, and shall deliver 4,406 shares thereof to the said Lippincott, and if the said stock should be offered to the public at a price varying from the said \$90. per share, but at an average price in ex-

cess of \$25 per share, the amount of stock to be retained by the said Edison as well as the amount to be delivered to the said Lippincott, shall be determined in like manner.

What is meant by average price is the quotient obtained by dividing the aggregate sales (total gross amount of sales) by the number of shares sold.

(e) The said Edison shall have full voting power on this stock while it remains in his possession as herein provided for. Should the said Lippincott prefer to sell the stock referred to in this section at private sale instead of at public sale as above provided for, he shall have the right to do so subject to the conditions imposed herein as regards public sale.

In Witness Whereof, the parties hereto have severally to this instrument set their hands and seals, the same being executed for convenience in two like parts. Done at the Laboratory of Thomas A. Edison, Orange, New Jersey, on the day and year above named.

Witness to Mr. Lippincott. JESSE H. LIPPINCOTT. [L. S.]
S. B. EATON.

Witness to Mr. Edison. THOMAS A. EDISON. [SEAL.]
SAM'L INSULL.

In Consideration of the sum of One Dollar, by each of the parties to the foregoing instrument to the other in hand paid, the receipt whereof is hereby acknowledged, it is mutually agreed by and between the said Jesse H. Lippincott and the said Thomas A. Edison, the parties to the said foregoing agreement of July 30th, 1889, that the time of performance of the covenants and conditions in said agreement contained, and of each of them, be and the same hereby is extended up to and including the First day of April, 1890.

In Witness Whereof, the parties hereto have severally to this instrument set their hands and seals, the 31st. day of December, 1889, at the City of New York.

Witness to Mr. Lippincott.

JESSE H. LIPPINCOTT. [L. S.]

H. W. SIMPSON.

Witness to Mr. Edison.

THOMAS A. EDISON. [L. S.]

A. O. TATE.

JOHN R. HARDIN,
COUNSELLOR AT LAW,
NEWARK, N. J.

NEWARK, N. J., February 15th, 1895.

The undersigned, Receiver of the North American Phonograph Company, an insolvent corporation, hereby solicits bids for the property of the said corporation hereinafter described, such bids to be in writing, addressed to the subscriber as Receiver of the said North American Phonograph Company, and to be delivered to the said Receiver on or before the fifteenth day of March, eighteen hundred and ninety-five.

I.

A large stock of miscellaneous phonograph and graphophone machines, tables, cabinets, parts and appliances, including obsolete and available material, inventoried by the North American Phonograph Company in the year eighteen hundred and ninety-four at upwards of Forty Thousand Dollars (\$40,000).

II.

All the right, title and interest of the North American Phonograph Company of, in and to letters patent of the United States for phonographs, graphophones or appliances, or improvements of either or both, and in any and all licenses granted under any such letters patent to said Company, or to any one else for it.

III.

All the right, title and interest of the North American Phonograph Company in the stock of the various local Companies, whether now on deposit with the Central Trust Company, of New York City, or still retained by the local Companies or held in trust for the said North American Phonograph Company.

JOHN R. HARDIN,
COUNSELLOR AT LAW,
NEWARK, N. J.

NEWARK, N. J., February 15th, 1895.

The undersigned, Receiver of the North American Phonograph Company, an insolvent corporation, hereby solicits bids for the property of the said corporation hereinafter described, such bids to be in writing, addressed to the subscriber as Receiver of the said North American Phonograph Company, and to be delivered to the said Receiver on or before the fifteenth day of March, eighteen hundred and ninety-five.

I.

4000.
A large stock of miscellaneous phonograph and graphophone machines, tables, cabinets, parts and appliances, including obsolete and available material, inventoried by the North American Phonograph Company in the year eighteen hundred and ninety-four at upwards of Forty Thousand Dollars (\$40,000).

II.

6000.
All the right, title and interest of the North American Phonograph Company of, in and to letters patent of the United States for phonographs, graphophones or appliances, or improvements of either or both, and in any and all licenses granted under any such letters patent to said Company, or to any one else for it, *in all contracts, licenses, etc*

III.

10000.
All the right, title and interest of the North American Phonograph Company in the stock of the various local Companies, whether now on deposit with the Central Trust Company, of New York City, or still retained by the local Companies or held in trust for the said North American Phonograph Company.

IV.

1000.
All the good will of the business of the North American Phonograph Company, the same having been preserved by the Receiver by prompt and faithful attention to all legitimate demands

Circular Letter

*Made by J R Hardin, Receiver
of North American Phonograph
Co; advertising for bids*

of the trade from the time of his appointment until now, the Company being, for business purposes at the present time, a going concern. 10

V.

All the accounts, notes and bills receivable of the North American Phonograph Company, including all claims against local Companies and all installment contracts and mortgages belonging to the said North American Phonograph Company. 4000

VI.

All the right, title and interest of the North American Phonograph Company of, in and to any phonographs or graphophones situated anywhere within the United States or Canada out on trial, lease or conditional sale, or in any way belonging to or controlled by said Company. 2000

The above property of the North American Phonograph Company is to be sold by the Receiver subject to all claims and litigations affecting the property to be conveyed, and the Receiver will not guarantee the property so sold against patent or other litigation. The right, title or interest of the North American Phonograph Company is all that he undertakes to sell, and all that he will expect to convey, and the purchaser buys at his own risk.

The property described under Paragraph I is located at the Edison Phonograph Works, Orange, New Jersey, and can be inspected there by *bona fide* bidders on application to Mr. W. E. Gilmore, Superintendent. Information about the matters referred to in the remaining paragraphs can be had at the office of the Receiver, Prudential Building, Newark, New Jersey.

The list of patents, book accounts, &c., is too long to be annexed to this notice, and while the Receiver will do all in his power to aid bidders to an examination of the property offered for sale, he cannot be expected to furnish correspondents with detailed statements of patents, book accounts, &c. Personal attention will be given to all reasonable requests made by inquirers at his office.

Bids are solicited for all or any part of the property, the Receiver reserving the right to reject any or all bids. The bids are also subject, if accepted, to confirmation by the Court of Chancery of New Jersey if in the judgment of the Receiver such confirmation should be necessary or expedient.

Twenty per cent. of the purchase money must be paid on the acceptance of the bid, and the balance on confirmation of the sale and delivery of proper written conveyance.

The property, if sold, will be delivered at the Edison Phonograph Works, Orange, New Jersey.

JOHN R. HARDIN, *Receiver*

North American Phonograph Company, Prudential Building, Newark, N. J.

"A"

PHONOGRAPHS.

REPORT ON PATENTS TO JUNE 1, 1889.

REPORT.

This Report covers every United States Patent, granted prior to June 1, 1889, for Phonographs, or inventions pertaining thereto, and gives in connection with each patent the following facts in the following order: number of patent, name of person to whom issued, date of patent, title of invention, any assignments or grants of rights under the patent, and present ownership of the patent, so far as disclosed by the Records of the United States Patent Office.

PHONOGRAPH PATENTS.

No. 200,521, T. A. Edison, February 19, 1878. Phonograph or speaking machine.

On January 7, 1878, an exclusive license to make and sell the invention in connection with toys for the use and amusement of children was granted by Edison to Oliver D. Russell, of New York City.

On May 3, 1878, the above license was extended to include Charles B. Harris, of New York City, making Russell & Harris joint licensees. This license is apparently in force to-day.

On January 30, 1878, an agreement was made between Edison and the following persons: G. G. Hubbard, of Boston; G. T. Bradley, of Providence; Charles A. Cheever, of New York City; H. L. Roosevelt, of New York City; and W. H. Painter, of Washington, granting the latter certain rights and privileges. This agreement is not on record and its terms therefore do not appear, but it is referred to in the agreement next recited.

On May 21, 1878, the parties named in the preceding clause, assigned to the Edison Speaking Phonograph Co. all their rights and interest under the agreement of January 30, 1878, and under any license or grant relating to any invention made by Edison and referred to in said agreement, and particularly under any license under Edison patent No. 200,521. T. A. Edison consented to this assignment.

On July 27, 1888, Edison assigned his entire right, title and interest in this invention and patent to the Edison Phonograph Co. This assignment recites that it is made in accordance with an existing agreement between the parties.

It follows that the patent is now owned by the Edison Phonograph Co., subject to the license granted to Russell and Harris, and the rights of the Edison Speaking Phonograph Co. under the agreement of May 21, 1878.

Note. The Edison Speaking Phonograph Co. and the Edison Phonograph Co. may possibly be the same concern.

The agreements of January 30, 1878, and the existing agreement between Edison and the Edison Phonograph Company above referred to, but not recorded, should be examined.

No. 201,760, T. A. Edison, March 26, 1878. Speaking Machine.

No assignment has been made. The invention and patent are, therefore, still owned by Edison.

30, 1878, an agreement was made between following persons: G. G. Hubbard, of Boston; Charles A. Cheever, of Providence; H. L. Roosevelt, of New York City; and of Washington, granting the latter certain leges. This agreement is not on record and we do not appear, but it is referred to in the recited.

1878, the parties named in the preceding to the Edison Speaking Phonograph Co. and interest under the agreement of January under any license or grant relating to any in Edison and referred to in said agreement, under any license under Edison patent No. Edison consented to this assignment.

1888, Edison assigned his entire right, title and interest in this invention and patent to the Edison Speaking Phonograph Co. This assignment recites that it is made in an existing agreement between the parties. The patent is now owned by the Edison Speaking Phonograph Co. subject to the license granted to Russell and the rights of the Edison Speaking Phonograph Co. under the agreement of May 21, 1878.

Edison Speaking Phonograph Co. and the Edison Phonograph Co. may possibly be the same con-

of January 30, 1878, and the existing Edison and the Edison Phonograph referred to, but not recorded, should be

A. Edison, March 26, 1878. Speaking Phonograph. No assignment has been made. The invention and patent owned by Edison.

No. 213,554, T. A. Edison, March 25, 1879. Automatic Telegraphs.

No assignment has been made. Edison, therefore, holds the legal title to this invention and patent.

On April 4, 1871, Edison made an agreement with George Harrington, in which he appears to assign to the latter a two-thirds interest in all future improvements in automatic telegraphy. Harrington may, therefore, have an equitable title to two-thirds of this invention and patent.

NOTE.—This invention does not relate to phonographs. We include it in this report, because we were directed to do so.

No. 227,679, T. A. Edison, May 18, 1880. Phonographs.

On July 27, 1888, Edison assigned his entire right, title and interest in this invention and patent to the Edison Phonograph Co., which now owns the same.

No. 382,414, T. A. Edison, May 8, 1888. Burnishing Attachment for Phonographs.

On July 27, 1888, Edison assigned his entire right, title and interest in this invention and patent to Edison Phonograph Co., which now owns the same.

No. 382,416, T. A. Edison, May 8, 1888. Feed and Return Mechanism for Phonographs.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 382,417, T. A. Edison, May 8, 1888. Process of Making Phonogram Blanks.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 382,418, T. A. Edison, May 8, 1888. Phonogram Blanks and Phonograms.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 382,419, T. A. Edison, May 8, 1888. Process of Duplicating Phonograms.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 382,462, T. A. Edison, May 8, 1888. Phonogram Blanks and Phonograms.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 386,974, T. A. Edison, July 31, 1888. Phonographs.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 393,462, T. A. Edison, assignor to Edison Phonograph Co., Nov. 27, 1888. Process of Making Phonogram Blanks.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 393,463, T. A. Edison, assignor to Edison Phonograph Co., Nov. 27, 1888. Machine for Making Phonogram Blanks.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 393,464, T. A. Edison, assignor to Edison Phonograph Co.

18. T. A. Edison, May 8, 1888. Phonogram Phonograms.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

19. T. A. Edison, May 8, 1888. Process of Phonograms.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

20. T. A. Edison, May 8, 1888. Phonogram Phonograms.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

21. T. A. Edison, July 31, 1888. Phonographs.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

22. T. A. Edison, assignor to Edison Phonograph Co., Nov. 27, 1888. Process of Making Phonogram

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

23. T. A. Edison, assignor to Edison Phonograph Co., Nov. 27, 1888. Machine for Making Phonogram

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

24. T. A. Edison, assignor to Edison Phonograph Co., Nov. 27, 1888. Machine for Making Phonogram

graph Co., Nov. 27, 1888. Machine for Making Phonogram Blanks.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 393,465, T. A. Edison, assignor to Edison Phonograph Co., Nov. 27, 1888. Method of Preparing Phonograph Recording Surfaces.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 393,466, T. A. Edison, November 27, 1888. Phonograph Recorder. No assignment has been made.

The invention and patent are therefore still owned by Edison.

No. 393,966, T. A. Edison, December 4, 1888. Method of Recording and Reproducing Sounds.

No assignment has been made. The invention and patent are therefore still owned by Edison.

No. 393,967, T. A. Edison, December 4, 1888. Method of Recording and Reproducing Sounds.

No assignment has been made. The invention and patent are therefore still owned by Edison.

No. 393,968, T. A. Edison, December 4, 1888. Phonograph Recorder.

No assignment has been made. The invention and patent are therefore still owned by Edison.

No. 394,105, T. A. Edison, assignor to Edison Phonograph Co., December 4, 1888. Phonograph Recorder.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 394,106, T. A. Edison, assignor to Edison Phonograph Co., December 1, 1888. Phonograph Reproducer.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 397,280, T. A. Edison, February 5, 1889. Phonograph Recorder and Reproducer.

No assignment has been made. The invention and patent are therefore still owned by Edison.

No. 397,706, T. A. Edison, February 12, 1889. Phonograph.

No assignment has been made. The invention and patent are therefore still owned by Edison.

No. 400,629, C. Batchelor, April 2, 1889. Phonograph.

No assignment has been made. The invention and patent are therefore still owned by Batchelor.

No. 400,616, T. A. Edison, assignor to Edison Phonograph Co., April 2, 1889. Phonograph Recorder and Reproducer.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 400,647, T. A. Edison, assignor to Edison Phonograph Co., April 2, 1889. Phonograph.

On July 27, 1888, Edison assigned his entire right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 400,648, T. A. Edison, April 2, 1889. Phonogram Blanks.

No assignment has been made. The invention and patent are therefore still owned by Edison.

T. A. Edison, assignor to Edison Phonograph Co., 1888. Phonograph Reproducer. 1888, Edison assigned his entire right, title and patent to Edison Phonograph Co. owns the same.

T. A. Edison, February 5, 1889. Phonograph Reproducer. No assignment has been made. The invention and patent are therefore still owned by Edison.

T. A. Edison, February 12, 1889. Phonograph Reproducer. No assignment has been made. The invention and patent are therefore still owned by Edison.

F. Batchelor, April 2, 1889. Phonograph Reproducer. No assignment has been made. The invention and patent are therefore still owned by Batchelor.

T. A. Edison, assignor to Edison Phonograph Co., 1888. Edison assigned his entire right, title and patent to Edison Phonograph Co. owns the same.

T. A. Edison, assignor to Edison Phonograph Co., 1889. Phonograph Reproducer. 1888, Edison assigned his entire right, title and patent to Edison Phonograph Co. owns the same.

T. A. Edison, April 2, 1889. Phonogram. No assignment has been made. The invention and patent are therefore still owned by Edison.

No. 400,649, T. A. Edison, April 2, 1889. Method of making Phonogram Blanks.

No assignment has been made. The invention and patent are therefore still owned by Edison.

No. 400,650, T. A. Edison, April 2, 1889. Method of making Phonogram Blanks.

No assignment has been made. The invention and patent are therefore still owned by Edison.

GENERAL NOTE. The agreements of January 30, 1878, and May 21, 1878, and the existing agreement between Edison and the Edison Phonograph Company, all of which are referred to under patent No. 200,521, and which are not on record, and have not been submitted to us, may possibly affect the title to the above Edison patents.

Respectfully submitted,

WITTER & KENYON.

GRAPHOPHONES.

REPORT ON PATENTS TO JUNE 1, 1889.

REPORT.

This report covers every United States patent granted prior to June 1, 1889, for graphophones, or inventions pertaining thereto, and gives, in connection with each patent, the following facts in the following order: number of patent, name of person to whom issued, date of patent, title of invention, any assignments or grants of rights under the patent and the present ownership of the patent, so far as disclosed by the records of the United States Patent Office.

GRAPHOPHONE PATENTS.

No. 341,212, A. G. Bell, C. A. Bell and S. Tainter, May 4, 1886, Reproducing Sounds from Phonograph Records.

On March 29, 1887, A. G. Bell, C. A. Bell and S. Tainter assigned the invention and patent to the Volta Graphophone Co. In this assignment the number of the patent is incorrectly recited as 314,312; but as the title of the invention and the date of the patent are correctly given, the patent is probably sufficiently identified. This mistake, however, should certainly be corrected.

On June 29th, 1887, C. A. Bell assigned his entire right, title and interest in the invention and patent to the Volta Graphophone Company. This assignment seems to be superfluous.

On July 21, 1887, S. Tainter assigned his entire right, title and interest in the invention and patent to the Volta Graphophone Company. This assignment seems to be superfluous.

On June 29, 1887, the Volta Graphophone Co. granted to the American Graphophone Co. the sole and exclusive license under all United States Patents then owned or controlled, or which might thereafter be owned or controlled by the said Volta Graphophone Co., subject to certain conditions and provisions.

* It follows that the patent is owned by the Volta Graphophone Co. (provided that the assignment first above mentioned is operative), and that the American Graphophone Co. is the exclusive licensee.

No. 341,213, A. G. Bell, C. A. Bell and S. Tainter, May 4, 1886. Transmitting and Recording Sounds by Radiant Energy.

On October 30th, 1886, A. G. Bell, C. A. Bell and S. Tainter assigned the invention and patent to the American Bell Telephone Co., which now owns the same.

If this is an invention which is capable of use both in connection with the telephone and the phonograph, then, as appears from the agreement between the Volta Graphophone Co. and the American Graphophone Co., dated June 29, 1887, the American Graphophone Co. may have a license to make, use and sell the invention in connection with phonographs and graphophones, by virtue of certain unrecorded agreements. This question cannot be determined with any more certainty from the agreements on record.

No. 341,214, C. A. Bell and S. Tainter, May 4, 1886. Recording and reproducing speech and other sounds.

9th, 1887, C. A. Bell assigned his entire right, interest in the invention and patent to the Volta Graphophone Company. This assignment seems to be

1887, S. Tainter assigned his entire right, interest in the invention and patent to the Volta Graphophone Company. This assignment seems to be

9, 1887, the Volta Graphophone Co. granted the American Graphophone Co. the sole and exclusive right in all United States Patents then owned or controlled which might thereafter be owned or controlled by the American Graphophone Co., subject to certain conditions.

that the patent is owned by the Volta Graphophone Co. (provided that the assignment first above mentioned), and that the American Graphophone Co. is an exclusive licensee.

A. G. Bell, C. A. Bell and S. Tainter, May 4, 1886. Recording and Reproducing Sounds by Radiant

30th, 1886, A. G. Bell, C. A. Bell and S. Tainter assigned the invention and patent to the American Graphophone Co., which now owns the same.

invention which is capable of use both in the telephone and the phonograph, then, by the agreement between the Volta Graphophone Co. and the American Graphophone Co., dated June 29, 1887, the American Graphophone Co. may have a license to use and sell the invention in connection with telephones and graphophones, by virtue of certain unrevoked patents. This question cannot be determined with certainty from the agreements on record.

C. A. Bell and S. Tainter, May 4, 1886. Reproducing speech and other sounds.

On March 29, 1887, C. A. Bell and S. Tainter assigned the invention and patent to the Volta Graphophone Co., which now owns the same.

On June 29, 1887, C. A. Bell assigned all his right, title and interest in the invention and patent to the Volta Graphophone Co. This assignment seems to be superfluous.

On July 21, 1887, S. Tainter assigned all his right, title and interest in the invention and patent to the Volta Graphophone Co. This assignment seems to be superfluous.

By the agreement of June 29, 1887, already cited, the American Graphophone Co. has an exclusive license under this patent.

No. 341,287, S. Tainter, May 4, 1886. Recording and reproducing sounds.

On March 29, 1887, S. Tainter assigned the invention and patent to the Volta Graphophone Co., which now owns the same.

By the agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

No. 341,288, S. Tainter, May 4, 1886. Apparatus for recording and reproducing sounds or sonorous vibrations.

On March 29, 1887, S. Tainter assigned the invention and patent to the Volta Graphophone Co., which now owns the same.

By the agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

No. 374,133, C. S. Tainter, Nov. 29, 1887. Paper cylinder for Graphophonic records & other purposes.

On December 30, 1887, C. S. Tainter assigned the invention and patent to the Volta Graphophone Co., which now owns the same.

By the agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

No. 375,579, C. S. Tainter, December 27, 1887. Apparatus for recording and reproducing speech and other sounds.

On January 31, 1888, C. S. Tainter assigned the invention and patent to the Volta Graphophone Co., which now owns the same.

By the agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

No. 380,535, C. S. Tainter, April 3, 1888. Graphophone.

On July 28, 1888, C. S. Tainter assigned the invention and patent to the Volta Graphophone Co., which now owns the same.

By the agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

No. 385,836, C. S. Tainter, July 10, 1888. Graphophone.

On July 28, 1888, C. S. Tainter assigned the invention and patent to the Volta Graphophone Co., which now owns the same.

By the agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

No. 385,837, C. S. Tainter, July 10, 1888. Graphophoneic Tablet.

On July 28, 1888, C. S. Tainter assigned the invention and patent to the Volta Graphophone Co., which now owns the same.

By the agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

No. 393,190, C. S. Tainter, November 20, 1888. Tablet for use in Graphophones.

No assignment has been made. The invention and patent are therefore still owned by Tainter.

No. 393,191, C. S. Tainter, November 20, 1888. Support for Graphophone Tablets.

579, C. S. Tainter, December 27, 1887. Apparatus for recording and reproducing speech and other sounds. January 31, 1888, C. S. Tainter assigned the invention to the Volta Graphophone Co., which now owns

agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

585, C. S. Tainter, April 3, 1888. Graphophone. July 28, 1888, C. S. Tainter assigned the invention to the Volta Graphophone Co., which now owns

agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

586, C. S. Tainter, July 10, 1888. Graphophone. July 28, 1888, C. S. Tainter assigned the invention to the Volta Graphophone Co., which now owns

agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

587, C. S. Tainter, July 10, 1888. Graphophone. July 28, 1888, C. S. Tainter assigned the invention to the Volta Graphophone Co., which now owns

agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

588, C. S. Tainter, November 20, 1888. Tablet Graphophones.

No assignment has been made. The invention and patent are still owned by Tainter.

589, C. S. Tainter, November 20, 1888. Support for Tablets.

No assignment has been made. The invention and patent are therefore still owned by Tainter.

GENERAL NOTES. The agreements referred to in the contract of June 29, 1887, between the Volta Graphophone Co. and the American Graphophone Co., and which do not appear to be on record, should be examined, as they undoubtedly affect the rights of the various parties mentioned in this report, in relation to the inventions and patents enumerated. These agreements are as follows: One, dated January 6, 1886, between A. G. Bell, C. A. Bell and S. Tainter, parties of the first part, and Charles J. Bell and James H. Saville, parties of the second part; another dated July 20, 1883, between A. G. Bell, C. A. Bell and S. Tainter under the name of the Volta Laboratory Association, parties of the first part, and the American Bell Telephone Company, party of the second part; another dated March 28, 1887, and amended and finally accepted and agreed upon on June 22, 1887, between James O. Clephane, John H. White and Andrew Devine, parties of the first part, and the Volta Graphophone Company, party of the second part.

In this report we assume that the American Graphophone Co. has carried out the terms of its agreement of June 29, 1887, with the Volta Graphophone Company, and that the exclusive license granted to the former is therefore still in force.

C. S. Tainter and S. Tainter named in this report are one and the same person.

Respectfully submitted,

WILLIAM & KENYON.

A.

MISCELLANEOUS SPEAKING MACHINES.

REPORT ON PATENTS TO JUNE 1, 1889.

REPORT.

This report covers the miscellaneous United States patents granted prior to June 1, 1889, for Speaking Machines, or inventions pertaining thereto, and gives, in connection with each patent, the following facts in the following order: number of patent, name of person to whom issued, date of patent, title of invention, any assignments or grants of rights under the patent, and the present ownership of the patent, so far as disclosed by the records of the United States Patent Office.

MISCELLANEOUS SPEAKING MACHINE PATENTS.

No. 219,939, A. W. Hall; Sept. 23, 1879. Phonographs.

On April 30, 1880, A. W. Hall assigned eight-fifteenths of his entire right, title and interest in the invention and patent to Charles A. Cheever, and three-fifteenths to W. K. Applebaugh, with certain agreements between the parties limiting their power to dispose of their respective interests. Hall also agreed to assign any future improvements to the same parties in the same proportions.

On August 4, 1880, Hall assigned his remaining four-fifteenths of the invention and patent to Cheever.

Charles A. Cheever therefore owns twelve-fifteenths and W. K. Applebaugh three-fifteenths of the invention and patent. Cheever has the power to sell or dispose of the entire patent at a sum not less than \$3,000.

No. 287,166, C. G. Reynolds, October 23, 1883. Phonograph.

No assignment has been made. The invention and patent are therefore still owned by Reynolds.

No. 356,377, C. J. Hohenstein, February 1, 1887. Sound Recording Apparatus.

No assignment has been made. The invention and patent are therefore still owned by Hohenstein.

No. 364,472, Leo Bock, Jr., June 7, 1887. Recording and Reproducing Sound Waves.

On November 29, 1887, L. Bock, Jr., assigned all his right, title and interest in invention and patent to Phoenix Electrical Co. of New Jersey, which now owns the same.

Bock had filed an application about a year prior to this one, for an improvement on Photographic Automatic Telegraph. This prior invention, together with all future improvements thereon, had been assigned by *mesme* assignment to the Bock Electric Company of New York.

If this patent is for an invention which is an improvement upon the invention described and claimed in the prior Bock application, the Bock Electric Co. may have an equitable claim to this patent and invention, notwithstanding the assignment to the Phoenix Electrical Company.

No. 372,786, E. Berliner, November 8, 1887. Gramophone.

No assignment has been made. The invention and patent are therefore still owned by Berliner.

August 4, 1880, Hall assigned his remaining four-fifths of the invention and patent to Cheever.

A. Cheever therefore owns twelve-fifteenths and Debaugh three-fifteenths of the invention and Cheever has the power to sell or dispose of the entire at a sum not less than \$3,000.

No. 166, C. C. Reynolds, October 23, 1883. Phonograph. Assignment has been made. The invention and patent are still owned by Reynolds.

No. 377, C. J. Hohenstein, February 1, 1887. Sound Apparatus. Assignment has been made. The invention and patent are still owned by Hohenstein.

No. 72, Leo Bock, Jr., June 7, 1887. Recording and Reproducing Sound Waves.

On June 29, 1887, L. Bock, Jr., assigned all his right, title and interest in invention and patent to Phoenix Electric Company, New Jersey, which now owns the same.

Bock filed an application about a year prior to this improvement on Photographic Automatic Telephony for invention, together with all future improvements, had been assigned by ~~messe~~ assignor to Bock Electric Company of New York. The patent is for an invention which is an improvement on the invention described and claimed in the prior Bock patent. The Bock Electric Co. may have an equitable right in the patent and invention, notwithstanding the assignment to the Phoenix Electrical Company.

No. 1, E. Berliner, November 8, 1887. Gramophone. Assignment has been made. The invention and patent are still owned by Berliner.

No. 382,790, E. Berliner, May 15, 1888. Producing Records of Sounds.

No assignment has been made. The invention and patent are therefore still owned by Berliner.

No. 383,299, W. W. Jacques, Assignor of Edison Phonograph Toy Manufacturing Co., May 22, 1888. Confined Doll and Phonograph.

On April 27, 1888, W. W. Jacques assigned all his right, title and interest in invention and patent to Edison Phonograph Toy Manufacturing Co., of Maine, which now owns the same.

No. 392,796, C. E. Hadley, Assignor to Volta Graphophone Co., November 13, 1888. Manufacture of Wax, or Wax Coated Tablets, for use in Graphophones or Similar Apparatus.

On June 1, 1888, C. E. Hadley assigned his entire right, title and interest in invention and patent to the Volta Graphophone Co., which now owns the same.

By the agreement of June 29, 1887, the American Graphophone Co. has an exclusive license under this patent.

No. 392,953, G. H. Herrington, November 13, 1888. Method of Recording Speech.

On September 10, 1886, G. H. Herrington assigned his entire right, title and interest in the invention and patent to George H. Herrington and Edward H. Johnson, who now own the same jointly.

No. 393,640, E. T. Gilliland, assignor to Edison Phonograph Company, November 27, 1888. Phonograph.

On July 28, 1888, E. T. Gilliland assigned all his right, title and interest in invention and patent to Edison Phonograph Co., which now owns the same.

No. 397,856, G. H. Herrington, assignor to himself and

Edward H. Johnson, February 12, 1888. Method of Recording Speech.

On June 13, 1887, G. H. Herrington assigned all his right, title and interest in invention and patent to G. H. Herrington and Edward H. Johnson, who now own the same jointly.

No. 399,264, G. H. Herrington, March 12, 1889. Process of Duplicating Phonograms.

No assignment has been made. The invention and patent are therefore still owned by Herrington.

No. 399,265, G. H. Herrington, March 12, 1889. Process of Duplicating Phonograms.

No assignment has been made. The invention and patent are therefore still owned by Herrington.

No. 400,851, W. W. Jacques, assignor to the Edison Phonograph Toy Manufacturing Company, April 2, 1889. Phonograph Doll.

On March 4, 1889, W. W. Jacques assigned all his right, title and interest in invention and patent to Edison Phonograph Toy Manufacturing Co., which now owns the same.

No. 402,997, R. H. St. John, May 7, 1889. Case for carrying Phonograms, Graphograms and the like.

No assignment has been made. The invention and patent are therefore still owned by St. John.

Respectfully submitted,

WALTER & KENYON.

IN CHANCERY OF NEW JERSEY.

Between
Walter W. Cutting :
Ex'r. et al. :
Compls. : On
-and- :
North American Phono- :
graph Company, :
Debt. :
Bill to.

AFFIDAVIT OF MAILING NOTICES.

Coult & Howell,

Sol'rs. Receiver.

Newark, N. J., March 28, 1895.

JOHN R. HARDIN,
COUNSELLOR AT LAW,
NEWARK, N. J.

PRUDENTIAL BUILDING, 761 BROAD STREET

Newark, N. J., March 28, 1895.

*To the Creditors and Stockholders of the North
American Phonograph Company.*

You are hereby notified that Mr. Thomas A. Edison, of Orange, N. J., has offered the sum of \$125,100 for the entire assets of the North American Phonograph Company not heretofore disposed of or realized on by the Receiver of said Company, where-soever situated, and of whatsoever nature, and that the subscriber, Receiver of said North American Phonograph Company, will, on Monday, the eighth day of April, eighteen hundred and ninety-five, at the Chancery Chambers, Jersey City, New Jersey, report said offer to the Chancellor of the State of New Jersey, and recommend its acceptance and request direction from the Court to convey said property to said Edison under such conditions as the Court may fix.

And you are hereby further notified to attend at said time and place and be heard, if you desire, on the matter so to be reported to said Court.

Very respectfully,

JOHN R. HARDIN,

Receiver North American Phonograph Co.

IN CHANCERY OF NEW JERSEY.

Between

Walter W. Cutting, Ex'r.

et al.

Complainants,

-and-

North American Phonograph

Company,

Defendant.

On Bill &c.

Affidavit of Mailing No-
tices.

STATE OF NEW JERSEY:

: ss.

COUNTY OF ESSEX:

I, Charles M. Myers, being duly sworn according
to law on his oath, says that he is an attorney at law in
the employ of John R. Hardin, Receiver of the North Ameri-
can Phonograph Company; that on March thirtieth, April
first and April second, nineteen hundred and fifteen,
he deposited in the general post-office at the city of
Newark, ^{sealed envelopes} letters, with the postage properly addressed to each
one of the creditors and stockholders of said Company, and
far as the same could be ascertained by the Receiver, and
also to other persons who are or might be interested in the
sale of the assets of the North American Phonograph Com-
pany, each of which contained a notice, of which the annexed
is a true copy.

Sworn and subscribed
before me this 6th day
of April, 1895.

Charles M. Myers

COPY.

April 20, 1895.

IN CHANCERY OF NEW JERSEY.

In the matter of
WALTER W. CUTTING

and another
against

The North American
Phonograph Company.

X

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Letter of inquiry to Receiver.

John R. Hardin, Esq., Receiver,

North American Phonograph Company,

Prudential Building, Newark, N. J.

Dear Sir :-

This is to notify you that from the developments before the Chancellor regarding Mr. Edison's relations to the North American Phonograph Company I am satisfied that at least a part, and perhaps the whole, of Mr. Edison's claim against the Company is invalid, and that before the present relations between Mr. Edison and the Company are permitted to be changed, either by the acceptance of his bid or otherwise, a complete investigation of the relations between him and the Company should be made. To that end and in pursuance of the privilege accorded by the

Chancellor in his order of the 17th inst.,
the following specific questions to be answered by you;
but if you are acquainted with any other facts material to
this position, although not covered by the specific inquiries following, I request that you acquaint the Chancellor with the same.

1. - I wish to be permitted to see all contracts subsisting between Jesse H. Lippincott or the North American Phonograph Company and Thomas A. Edison on January 20th, 1890, and all contracts subsequently made between Thomas A. Edison and the North American Phonograph Company which relate to the rights or obligations of the North American Phonograph Company.

2. - I wish to be permitted to see all contracts made between the North American Phonograph Company or Jesse H. Lippincott and the Edison Phonograph Works which relate to the rights or obligations of the North American Phonograph Company.

3. - I wish to be informed how many of the bonds of the North American Phonograph Company are now outstanding, to whom they were issued, by what authority and upon what consideration; and, if the consideration was a pre-existing claim or debt, how and when such claim or debt arose.

4. - I wish to have, or to be permitted to make, a copy of the minutes of the Board of Directors or other authority for the issue of the said bonds.

5. - I wish to know whether any claim has been

proven or made before you, as receiver, in favor of Edison Phonograph Works, or its assigns; and, if so, what is the amount of such claim and how did it arise?

6. - I wish a statement of the assets and claims against the Company as ascertained by you.

7. - I wish to know whether Mr. Edison has ever received from the North American Phonograph Company any sum of money in excess of the specific sums which he was to receive as reimbursements for his expenses in experimenting with the phonograph and for its improvement; and if so, the amount of such sums and the purposes for which they were paid.

8. - I wish to know whether Mr. Edison has to your knowledge obtained any patents for improvements on the phonograph or made any improvements on the phonograph since January 20th, 1890; and, if so, what such patents or improvements are; whether Mr. Edison was under contract to assign such patents or improvements, or any of them, to or for the use of the North American Phonograph Company.

9. - I wish to be permitted to see any and all contracts with the American Graphophone Company in which the North American Phonograph Company had or has a beneficial interest.

10. - I wish to know whether, so far as you are informed, any improvements have been made since January 20th, 1890, in the graphophone, and whether the North American Phonograph Company has obtained the beneficial use of such improvements.

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11. - On the 20th of January 1890 the North American Phonograph Company made a statement of the resources and liabilities as follows:

"RESOURCES."

Invested permanently in machines	\$253,001.55
Cash	50,725.39
Call Loans, secured by collateral	226,775.73
Advanced to manufacturers over and above merchandise delivered	65,572.82
Book accounts	19,059.20
Due from sub-Companies organized and under contract	168,733.57
Due from companies under process of organization	100,000.00
	<u>\$883,868.26</u>

LIABILITIES.

Merchandise	\$ 4,232.80
Balance	879,635.36
	<u>\$883,868.26</u>

There are no other outstanding liabilities of this Company except on a manufacturing contract, which is limited to \$106,500 and will be offset by delivery of machines."

Are you aware whether such statement was true in fact?

12. - If the foregoing statement was true in fact, what disposition was made of the resources of the Company as shown in said statement?

13. - Annexed to my verified statement of objections to the acceptance of Mr. Edison's bid for the remaining assets of the North American Phonograph Company is a copy of a statement issued by the North American Phonograph Company on the 20th of January 1890 from which the foregoing statement of resources and liabilities was taken.

and this and a few of the following questions where they refer to a statement, refer to the statement aforesaid of the 20th of January 1890.

In the statement of the 20th of January 1890 it was said that the Company was to receive a further sum of \$283,733.

Did the North American Phonograph Company receive the \$283,733 shown in the said statement to be paid thereafter by sub-companies?

14. - Is the North American Phonograph Company the owner in its own name, or beneficially, of \$1,400,000 of the capital stock of the sub-companies? If not, what disposition has been made of the said stock? The statement aforesaid showed that the Company was to receive that quantity of stock from trustees.

15. - Was stock in the various local companies to the amount of \$1,400,000 deposited with the Central Trust Company ever delivered to the North American Phonograph Company? If so, what disposition has been made of the said stock? The statement aforesaid showed that such stock had been or was to be deposited with the Central Trust Company to be delivered to the North American Phonograph Company at the end of five years.

16. - Were the bonds of the North American Phonograph Company secured by mortgage? If they were, and you have a copy of the said mortgage, I request that you permit me to see it. If you have not a copy, I request that you inform me where and when such mortgage was recorded.

the minor companies referred to in the statement above mentioned, and that you state which, if any, of said companies are in active operation and which are, so far as you are informed, insolvent, and how much of the stock of each company is owned by the North American Phonograph Company.

18. - The statement hereinbefore referred to showed that 6,000 shares of the Company's stock had been put into the hands of trustees for the future use and benefit of the Company, if needed. Who were the said trustees and what disposition, if any, was ever made of the said 6,000 shares of stock?

19. - The said statement showed that it was then expected that the North American Phonograph Company would realize a handsome sum from the formation of the subcompanies in Canada. Was any sub-company formed? and, if so, what did the North American Phonograph Company realize from its formation?

20. - Are the Edison Phonograph Works now manufacturing phonographs? and, if so, by what authority do they claim that right?

21. - Who were the directors of the North American Phonograph Company during the years 1890, 1891, 1892, 1893 and 1894?

22. - What salaries were paid to any of the directors during the years mentioned?

23. - What patents does the North American Phonograph Company own, and when will they severally expire?

24. - What patents, so far as you are informed, does the Edison Phonograph Company own, and when do they expire?

25. - What is the alleged foundation of the debt or debts proved by Mr. Edison against the North American Phonograph Company before you?

26. - How much money has been paid since January 20th 1890 to the Edison Phonograph Works by the North American Phonograph Company?

Very truly yours,

(Signed)

Charles A. Boston.

AMERICAN PHONOGRAPH CO.

A Movement of the Stockholders to Protect Their Interests.

A movement is underway to protect the interests of the stockholders of the North American Phonograph Company. Mr. Charles A. Boston has this week obtained from Chancellor McGill, of New Jersey, an order directing the receiver, John R. Hardin, to furnish any stockholder or creditor of the company any information that may be desired, providing it is not prejudicial to the interests of the trust represented by the receiver.

Mr. Boston has entered into litigation to prevent the receiver from selling the remaining assets to Mr. Edison, who has offered \$125,000 for them.

Mr. Boston claims that the notice sent to stockholders of Mr. Edison's offer was not specific as to what composed the assets of the company, but that he found that the receiver proposed to convey to Mr. Edison not only all the goods, chattels and patent rights of the company, but also all its rights of action, the most valuable of which are rights of action against Mr. Edison himself, and that Mr. Edison proposed in turn not to pay his offer in cash but to take it in partial liquidation of his own debt, he claiming to be a creditor of the company to the extent of 83 per cent. of its entire indebtedness, and offering only to give bond to pay the remaining creditors such dividend as might be awarded to them. Thus would Mr. Edison acquire all of the assets of the company without the expenditure of any money at this time.

MR. EDISON'S MANAGEMENT.

He says that it developed at the hearing in Newark that Mr. Edison had so shaped the management of the concern that no other bidders could compete with him as he had not only neglected to convey and assign his patents for improvements on the phonograph to the company, but he had first secured to himself, at a sale made three days prior to the application for the appointment of a receiver, all of the stock which the North American Phonograph Company owned in the Edison Phonograph Company, which in turn owned all of the patents upon the phonograph existing at the time of the formation of the North American Phonograph Company, but until Mr. Edison is forced to convey it to the company other bidders will be completely barred, and yet when the conveyance is made to Mr. Edison it will extinguish all of the rights of the company against him.

Mr. Boston's statement of the case is this: that notwithstanding the company was represented in 1890 to have large resources in excess of all reasonable demands upon it, and notwithstanding Mr. Edison was under contract with the company to devote a portion of his time to improving the phonograph, and to assign to the company all patents for improvements with the exception of certain extras which do not figure in this controversy, and was to do this during the first five years without compensation, and during the subsequent five years for an average of less than \$10,000 a year, still within the next five years Mr. Edison, not having assigned to the company any improvements, figures as a creditor of the company to the extent of 83 per cent. of its entire indebtedness of about \$485,000, and is the owner, or claims to be the owner, of the entire capital stock of the Edison Phonograph Company which was by far the most valuable asset of the North American Phonograph Company, he having been a director of the company since its inception and the president since May, 1892.

Mr. Boston now proposes to dispute Mr. Edison's claim in its entirety. It developed at the hearing I am informed that the American Graphophone Company was anxious to bid at the sale, but that Mr. Edison had succeeded in so clouding the most valuable rights of the company by reason of his sale to himself of his stock in the Edison Phonograph Company, and of his failure to comply with his contract to assign to his company his patents for improvements that they were precluded from bidding.

TO REJECT EDISON'S BID

ORDER BY CHANCELLOR M'GILL IN THE PHONOGRAPH SUIT.

The Receiver of the North American Company Will Not Be Permitted to Accept \$125,000 for Its Assets—Mr. Edison Explains His Relations with the Company.

The affairs of the North American Phonograph Company and its relations with Thomas A. Edison, the inventor, had another airing yesterday before Chancellor McGill in Chancery Chambers, Jersey City. The company is in the hands of a receiver. The original capital of \$1,000,000 has been almost wiped out, and the question before the Chancellor is on an application for permission to the receiver to accept a bid of \$125,000 from Mr. Edison for the remaining assets. All the lawyers interested in the case were present yesterday. It was alleged at the hearing a week ago that Mr. Edison, although President of the company, had not acted in good faith, but had promoted the interests of a rival company in which he was interested. It was also alleged that he was endeavoring to "freeze out" the other creditors. Lawyer Dyre of this city read Mr. Edison's answer yesterday.

"I have read the petitions of Michael W. Nolan and Charles A. Boston in this case," Mr. Edison says. "The statements contained in these petitions, by reason of errors of fact and the failure to state all the facts, make it appear that I have not dealt fairly with the North American Phonograph Company, or that I have attempted to take an unfair advantage of the situation to benefit myself and injure the other creditors of the company. Not having been in any way responsible for the organization of the North American Phonograph Company, but having spent a great deal of time without remuneration and a considerable amount of my means received from other inventions to prevent the failure of the enterprise, I feel that these charges are unjust, and that my position before this court should be set right."

Mr. Edison then gives in detail the fact of his connection with the North American Phonograph Company. In October, 1887, he invented an improved phonograph, and in order to put it on the market the Edison Phonograph Company was organized. The company secured the title to the patents. In April, 1888, another company was organized and secured from Mr. Edison the right to manufacture the phonograph. Mr. Edison owned the majority of stock in the two companies and was President of each. Before that time the American Graphophone Company of Washington, D. C., had secured patents which were used for infringement of patents. A compromise was finally effected which included an exchange of manufacturing licenses under both sets of patents, and the formation of a selling company which should sell both machines on terms of equality.

The Edison phonograph works was to manufacture a machine of a definite type, which was only to be changed by inventions which Mr. Edison might make, while the Graphophone Company was to manufacture machines of another type, and the North American Phonograph Company and Jesse H. Lippincott of Pittsburgh, Pa., were to sell both of the machines through local companies. Under this arrangement Mr. Edison was to receive \$500,000 and Mr. Lippincott was to receive stock of the Edison Phonograph Company when the payments were completed.

Mr. Lippincott organized the North American Phonograph Company and put phonographs on the market. He paid the American Graphophone Company \$250,000 on account of 1,000 graphophones. The instrument, Mr. Edison says, proved absolutely unsatisfactory and were thrown back on Mr. Lippincott's hands. They were turned into scrap. The business proved a failure. The Graphophone Company took Mr. Lippincott's money and paid it among the stockholders.

Mr. Edison said that in January, 1892, he sold ten per cent. of the capital stock of the company, and that his claim against the company, he continues, "for experimental expenses amounted to \$240,530.05."

Graph works for machines furnished was \$240,530.05. I insisted that these claims should be paid, and the stockholders asserted that they should be paid in bonds.

A settlement was effected by which Mr. Edison received \$70,000 in bonds and \$251.02 in cash for his experimental expenses, and the Edison works received \$140,000 in bonds. By this arrangement the works lost \$94,530.05. Mr. Edison then practically withdrew from any share in the management of the company's affairs.

In the latter part of 1893 the North American Company became involved with the United Edison Phonograph Company. This so annoyed Mr. Edison that he resigned the Presidency of the North American Company, and also severed his connection with the company. The business began to fall off rapidly.

"It was clearly seen," Mr. Edison says, "that the company was using its principal to pay expenses and its assets were being rapidly consumed. A receiver was appointed, but he was not of my selection. I received his offer and made my bid in good faith. I have not sought to manipulate the affairs or the assets of the company."

N.Y. SUN APR. 29, 1895

4/20/95

In explanation of the tangle in which his claims against the three companies seemed to be involved, Mr. Edison said that by his agreement with Mr. Lippincott he was to receive \$500,000. He has \$152,500 of Mr. Lippincott's notes for the unpaid balance of this sum. The notes were endorsed by the North American Phonograph Company, and 11,850 shares of the Edison Phonograph Company was given to him as security, with the understanding that the stock was to be sold at public or private sale in case of default in the payment of any of the notes. The notes were not paid and Mr. Edison foreclosed on the stock. He says he did not prevent any one else from bidding, he simply desired to have the stock disposed of as cheaply and expeditiously as possible. No one appeared at the sale, and Mr. Edison bid in the stock himself. This closed Mr. Edison's statement.

One of the lawyers representing Mr. Charles A. Boston urged that Mr. Edison's bid of \$125,000 for the remainder of the North American Company's assets should be rejected, and that his dealings with the old American Graphophone Company should be carefully investigated.

The lawyers on either side spent nearly the entire afternoon in argument. At its close Chancellor McGill made an order directing the receiver to reject Mr. Edison's bid. What further action will be taken was not determined.

EDISON'S BID IS REJECTED

The Assets of the North American Phonograph Company Must Be Offered for Sale Again.

The application of John R. Hardin, receiver of the North American Phonograph Company, for the confirmation of the bid of \$125,000 made by Thomas A. Edison for the entire assets and effects of the company, came up yesterday morning before Chancellor Alexander T. McGill in Chambers in Jersey City. After a long hearing Chancellor McGill rejected the bid of Mr. Edison, and directed a resale of the property.

A formidable array of lawyers was present. Mr. Edison was represented by F. H. Lam, of Guild & Lam, of Newark, N. J., and Richard N. Dyre, of Dyre & Driscoll, this city. Michael W. Nolan, the chief contestant, was represented by R. Wayne Parker, of Newark, and J. Adriance Bush, of New York. Charles A. Boston appeared on his own behalf as a contesting stockholder in the North American company. John R. Hardin, the receiver, protected his own interests. Edward Q. Keasbey, of Newark, and former Judge W. Howard Hayes, of Newark, appeared also to represent stockholders and creditors.

Richard N. Dyre read an exhaustive affidavit by Mr. Edison, in which he stated that the petitions presented at the former hearing, on April 17, were unjust to him, by reason of errors of fact and failure to state all the facts, which made it appear that he (Edison) had not dealt fairly with the North American Phonograph Company, and had attempted to take unfair advantage of the situation to benefit himself and injure the other creditors of the company. He had personally expended about \$150,000 of his own money over and beyond every dollar he ever received from the company, besides giving a large part of his time without remuneration.

The phonograph was the only one of his prominent inventions which had not proven an entire commercial success, and his present attitude was simply a strong desire to prevent the phonograph from being written down in history as a commercial failure. This was the reason which led him to make the bid of \$125,000 on the assets of the North American Phonograph Company, with a view to making the phonograph finally commercially the theoretical possibilities which he had claimed for it.

After the representatives of the contestants had argued against the confirmation of the bid the Chancellor said that under the circumstances the only course was to reject the bid and instruct the receiver to gather into one lot all the assets, including the stock of the Edison Phonograph Company and all the patents, and offer them in an entirety at a public sale. He stated that he did not wish to be understood as reflecting on Mr. Edison, as from the evidence adduced he believed he had acted all through the difficulties as a high minded, honorable man.

N.Y. HERALD, 4/29/95

EDISON CAME OUT A LOSER.

He Explains His Relations to the North American Company.

The suit of Walter W. Cutting against the North American Phonograph Company, of which he is a stockholder, was again before Chancellor McGill in Jersey City yesterday. The company has been in the hands of a receiver since last August, and the counsel for some of the stockholders have intimated that Mr. Edison was not dealing fair. Mr. Edison's lawyer yesterday read a reply from Mr. Edison. He says he was not in any way responsible for the organization of the North American Phonograph Company, but spent a great deal of time without remuneration and a considerable amount of means received from other inventions to prevent the failure of the enterprise. He adds that a claim of the Edison phonograph works against the company, for \$240,530, was settled at a loss to him of \$94,510.

MORNING ADVERTISER 4/29/95

U.S. INVESTOR (BOSTON MASS)

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In testimony of
Beh.
Foster, the Ex. ch.
of the
North American
140 Sept.
Testimony
of
Fred. Apr. 27, 1875
William Bennett

906
OCT 1875

IN CHANCERY OF NEW JERSEY.

WALTER W. CUTTING, Executor, et al,
Complainants,
-and-
THE NORTH AMERICAN PHONOGRAPH
COMPANY,
Defendant.

Depositions taken in support of the petitions of Henry Stern, William Holzer, and Ferdinand B. Hesse, for an Order upon the Receiver, giving leave to examine the books of the North American Phonograph Company in his possession. Taken in pursuance of notice to the Receiver and in the presence of Edward Q. Keasby, Esq., of counsel for the petitioners, and of John R. Hardin Esq., the Receiver, before Herbert W. Knight, Esq., Master and Examiner in Chancery, on the 23rd day of April, 1895, at Newark, N.J.

The Receiver states that by reason of his appearance at this examination he does not waive any right that he may have to object to the efficiency of the petitions referred to for informalities or other defects.

It is stipulated that the depositions may be taken in shorthand and transcribed, and that the signatures of the witnesses are waived.

HENRY STERN, produced as a witness on the part of the Petitioners, being duly sworn to speak the truth, the whole truth, and nothing but the truth, and being examined by Edward Q. Keasby Esq., testified as follows.

DIRECT EXAMINATION.

Q Where do you live?

A Private, or business address?

Q Where do you live and where is your office?

A I reside in New York City, 54 West 35th Street.; my place of business is 50 Broadway, New York.

Q What is your business?

A My business is that of an examiner and adjuster, negotiator.

Q Are you the owner of any shares of stock, of the North American Phonograph Company?

A. I am, 110; 100 shares do not stand in my name, 10 do stand in my name.

Q When were they purchased?

A They were purchased, I think 100 shares about the end of 1892, and 10 shares about November 1893 I should think.

Q In whose name do the 100 shares stand?

A I forget, I would have to look those up.

Q Someone in your office?

A That is another 100 shares.

Q Someone in your office holds another 100 shares?

A That is another 100 shares, - not in my office, that is in the office of H. Content & Co.

Q But you own 100 shares which stand in somebody else's name, you don't remember who and also 10 shares that stand in your own name?

A Yes, sir. I make it a rule to put as little stock in my own name as I possibly can.

Q How long has your office been at 50 Broadway?

A My office at 50 Broadway has I think, - it will be two years this first of the coming May.

Q Did you receive a printed notice from the Receiver of the

North American Phonograph Company addressed to the Creditors and Stockholders of that company, notifying them that Thomas A. Edison had offered the sum of \$125,100 for the entire assets of the company not theretofore disposed of by the Receiver, and that he would make application to the Court on the eight day of April and recommend the acceptance of the offer?

A Yes, such a notice came to my possession I think about the first of April.

Q Did you ever receive any other notice from the Receiver with regard to the disposal of the property of the company?

A I did not.

Q Did you not receive a printed notice dated February 15th, 1895, in reference to the property and assets?

A 1895 , February? No.

Q What was the first intimation that you received from the Receiver, or from anyone, that any bids had been solicited or made for the property of the company?

A It was the last notice which was received.

Q And that was dated about what day, or received about what time?

A About the first of April.

Q Did you then take measures to present a petition to the

Chancellor with reference to the matter?

A I did.

Q Who did you consult upon that subject?

A I consulted Mr. Theodore Seligman.

Q Why did you consult Mr. Theodore Seligman?

A For the simple reason I was in his office, I had business with his brother, Mr George Seligman in another matter, to be present at the taking of depositions in my office on the 9th day of April.

Q And what did you do with reference to the matter?

A General conversation came up about the North American business, and I remarked to him there was no reason why there should not be an examination made of that property, that I did not think that it was in as poor a condition as was stated; that from all I could hear that the commercial value of the phonograph was just about being established, that I found Mr. Edison was bringing it out in connection with his kinetoscope, ~~and if it~~ I saw the papers full of it, and if it was of any value to Mr. Edison or to other people, it ought to be of some value to the stockholders.

Q Did you take any measures then to examine, - make inquiries of the Receiver or an examination of the books?

A Mr. Seligman then said he would put himself in communi-

cation with the Receiver, which he did.

Q Did you receive any message from the Receiver?

A I did, in which the Receiver stated that he did not want to allow the examination for some reason, with the man who had been sent there; I thereupon answered that letter to the Receiver and told him I would appear personally, I think. I received a letter from the Receiver to be there the next afternoon at two o'clock, which I could not do owing to previous engagements, and I telegraphed to the Receiver saying that it was impossible to go that day.

Q Did you prepare and subscribe a petition to the Chancellor?

A I did. I think that was gotten up in my office on the 6th day of April if I am not mistaken, of this year.

Q Are you acquainted with the contents of the petition, have you read that petition?

A Yes, sir, I signed it.

Q And can you say whether or not the allegations in the petition are true?

A To the best of my knowledge and belief they are, particularly so from information which has come to my possession since.

Q You mean you have been confirmed in your belief?

A I have been confirmed in my belief.

Q Did you afterwards sign a supplemental petition with reference to the examination of the books, after the correspondence with the Receiver?

A I think there was a petition of that sort signed the week afterwards, I think there were two petitions Mr. Keasby. It was when you went over to Newark the second time, for the hearing here the second time, I think there were two hearings; the additional petition was signed by me for the second hearing with reference to the examination, after the correspondence had taken place with the Receiver. The second petition I think it was gotten up on the 13th day of April, if I am not mistaken, Saturday afternoon; I may be wrong as to the date but I know there was a supplemental petition.

Q What is the purpose of the examination of the books of the North American Phonograph Company, and what good can be gained by it in your opinion for yourself and other stockholders?

A Well in the first place, I don't know whether the Receiver ever made an expert examination of that property when he took it over.

Secondly: I think that an examination might bring about facts that some people little dream of at the

present time.

Third: I think that the capitalization of a peice of property of over \$6,000,000 ought not to be wiped out nolens volens without some show of trying to rehabilitate it. If the books have been examined by the Receiver and he can give me statements from them such as I want, I shall be satisfied with his statements; otherwise I think that an examination of those books is necessary from the beginning until the present day, so as to arrive step by step at the true standing of that company, to see what had been done, to see what the relations of Thomas A. Edison have been toward this company; to see what the relations of Spencer Trask & Co., have been with this company; to see what has become of some \$800,000 which Spencer Trask & Co., state have gone into the Treasury of this company, and of two hundred and some odd thousand dollars more which it was stated should come in later on. To see how much Mr. Edison has been paid for the patents of this company, and in what amounts. To see by what right the Directors have issued three hundred and thirty bonds of the value of \$1,000 each ahead of all the stock; to see for what prices they have been issued, whether they have been given out at par, or less. To see furthermore if the same have been

given for a debt, how that debt occurred. How it is estimated, this enormous property, and all that will have to be followed step by step. Furthermore as to whether that debt had an existence with the connivance of certain parties when the original stock was issued by Spencer Trask & Company, or whether that debt had been arrived at later on. To see why certain stocks of the Edison Phonograph Company were given with a collateral note to certain parties, and then bought in for a certain sum, \$10,000.

Q Do you know to whom this stock that you refer to---

A I understand, voted with the collateral note to Mr. Thomas Edison and bought in by him.

I furthermore want to see what has been paid for these patents, which I am told was the sum of \$500,000 though I do not know in what manner that amount has been paid. I think in view of all these facts, and furthermore that we are in possession of no trial balances, monthly or yearly, and that it is a very easy matter to force balances, it is absolutely necessary to see how these different entries have been made, to examine the minutes from the Minute Book of said company to see how the notices have been issued to the Directors of said company; to see who was present at the voting at such times. To furthermore see if this company has received any stocks, or the subsidiary

which it was stated in the original circular would be done and deposited; to see whether they have been so deposited, to see what benefit the company has derived from it, to see whether an allowance has been made out of the funds of this company for the perfection of the phonograph, to see what it has cost to produce the article, the merchandise, and what has been realized therefore; to arrive at an itemized account of what ^{the} balance sheets have shown yearly, of stock, parts, &c., and to see how the business has been administered in the meantime since it has been in the hands of the Receiver.

Of course if all this has been experted by the Receiver there is no use of my attempting to do it because his statement will be satisfactory if it covers all these grounds. I claim that in making an examination of books, that very few people start alike. In my correspondence with the Receiver he informed me that if I would state certain questions, and he so saw fit, in his judgment, he would have abstracts made from the books in answer to such questions. Now I claim that it is a matter of impossibility in this case to state definite questions to which definite abstracts from the books can be furnished; that any accountant who starts at the examination of a peice of

property must take into consideration not only the accounts as they stand on the books, but he must see how those accounts were arrived at, how the debits and credits were posted and for what reasons; how the physical condition of the corporation was at that time; whether offsets were made justly or unjustly; whether claims that exist are bona fide, and that he can arrive at these points only step by step. It may be that in this case, it is barely possible, that certain questions that I have enumerated above may be answered at very short notice, and a very short examination would convince me that there is nothing to be gained by a further examination; but in case I were not convinced of it, and I am allowed to do so, I will with expert assistants make an examination of such books, franchises, property, charter, in fact everything in connection with the company in its minutest detail, because I believe, and from what I read in the papers, that this business can be carried on at a profit, and that many of the stockholders present, or rather on record, whom I could reach with a circular if put in possession of a list of the stockholders, that a meeting of such stockholders could be called; that they would be perfectly willing if there is anything to rehabilitate that they would be assessed, and

that sufficient capital can be gotten together to take this over as a new company. It has been done in worst cases than this.

Q Have you had any experience in reorganizing companies?

A I have.

Q Have you had much experience?

A Well, a man not ought to blow his own horn.

Q But you have had considerable experience have you not?

A Oh yes. I would be perfectly willing to state the different experiences I have had in reorganizing, were it not that being employed in such matters by parties, you are employed in a private and fiduciary capacity, and I don't think it would be right for me right here to name whom I have been employed by, to give away other people's business. I will give you one that I have been employed in lately, because it is known throughout, and that is I have been connected with the amalgamation, concentration, and combination of the St. Louis Electric Light Plant, which I examined and went through, and it is a concern that is putting out today, a million dollars worth of output; it is not a two by six concern, it is a rather broad gauge concern.

Q For the purpose of enabling stockholders to save anything out of the wreck of a company, and in order that united action may be had, is there any necessity for making an examination of the affairs and business of the company?

A Undoubtedly; how could you put it before them, otherwise?

Q In connection with this company have you any information in reference to the question of the cost of manufacturing phonographs--

A I have.

Q One moment; and whether or not there was any doubt whether in the present management phonographs had been furnished as low as practicable under the present contract with the Edison Phonograph Works?

A That I don't know anything about. I have simply arrived at the cost of the phonograph because I know what it has been produced for under the contracts.

Q Have you information whether the phonographs for the North American Phonograph Company were manufactured by the Edison Phonograph Works, in which Mr. Edison was interested?

A Yes, sir.

Q What inquiry do you wish to make in regard to that?

A I want to find out, how much profit Mr. Edison made on those phonographs, before the North American Phonograph Company

got them. But that does not give me the right to examine the Edison Phonograph Work's books; that is the reason I got that information outside.

Q Do you know or have you information whether or not the Edison Phonograph Works were being used at the same time for experiments on inventions in other matters connected with the phonograph?

A No; I have listened to the phonograph in connection with the kenetiscope, that is all I know about it.

Q You know whose invention the kenetiscope is?

A Mr. Edison claims it is his; Mr. Auschultz, claims it is his; I don't know whose it is; ~~I don't know~~ Mr. Auschultz claims the tackyscope; Mr. Edison claims the Kenetiscope.

Q Does it make a difference in the examination of books whether the contents of the books are given to you by somebody else or whether you examine them yourself?

A Decidedly.

Q In the accuracy of the examination?

A Decidedly.

Q Why so, and why should you not accept abstracts made by Mr. Hardin?

A Well let us take the case of the Distillers and Cattle Feeders, which has been examined here lately; the offices of the company have given certain statements, and upon

the examination of expert statements there has been a difference found of \$1,800,000. That will answer the question I think.

Q How is it that there is a difference between the books as they appear, and the books as seen by an expert?

A Hardly know how to answer the question that way. Well let me say that entries are sometimes susceptible of misconstruction.

Q In order that you may ascertain whether the business is capable of being carried on with a profit, what is it necessary for you to examine into with reference to the relations between the North American Phonograph Company and the Edison Phonograph Works, which manufactured the phonographs?

A In a manufacturing business of this class it depends to a great extent as to how your goods are marketed, even after they are produced; of course you want to produce at as cheap a price and sell at as dear a price as it is possible, without making the people who are buyers disgusted with the extreme price. It depends also as to whether the concern has a sufficient working capital, so that it is not hampered financially, and as to whether its affairs are carried on in the most economical manner. By this I mean as to

whether the cost of manufacturing is brought down to the lowest, and the expense of distribution and management is also held at as low a price as possible.

Q Is it important to ascertain whether the contract between the North American Phonograph Company and the Edison Phonograph Works as to the cost of the machines, is lived up to?

A Why certainly that is part of the examination; any contract that is in existence ought to be examined.

Q And is it important to ascertain what entered into the cost of the machine, and whether the works were being used for any other experiments?

A That depends entirely upon the wording of the contract.

If the contract be so worded that machines were to be furnished at a stipulated price irrespective of the cost, why it does not matter; but if the contract were to read that an accounting is to be given, where they are to be manufactured at a certain price, plus a profit, what we call a shop profit, then of course you have got to arrive at the exact cost and to see whether the contract has been lived up to.

Q How do you propose, if you are allowed, to make an examination, and by whom and through whom?

A Well I think I shall take it up myself with my assistants .

Q Do you represent in this matter other stockholders?

A Yes, sir, I have about six or seven thousand shares together now and am making an effort for more.

Q Did you see the certificate of Mr. Hesse, who has filed a petition?

A Yes, sir, 1000 shares; he brought it to my office.

Q Was his petition signed in your presence?

A Yes, sir.

Q Was Mr. Holzer's petition also signed in your presence?

A It was, in my office and in my presence.

Q Mr. Hardin as I understand it in his correspondence suggested to you that your application to examine the books was made not in your own interests, but in some other interests?

A No, Mr. Hardin never stated that in his correspondence.

Q Mr. Hardin suggested it before the Court, in my presence?

A That is a different thing.

Q I will ask you what is the fact in regard to that matter?

A Not connected with anyone at all except those who have got stock and whose stock has so far come to my notice.

Q Have you any interest in the Edison United Phonograph Company?

A-Only know that such a thing is in existence; don't know anybody connected with it; don't know who the stockholders are; have never been in their office; don't know their business.

Q Do you mean to say that you have no interest in it?

A Not one penny's worth; don't even know the nature of their business.

Q Is this demand on your part, or this application, made in anyway on behalf of that company?

A It is not.

Q That is all.

CROSS EXAMINATION (By Mr. Hardin).

Q You are an accountant Mr. Stern?

A Yes, sir.

Q And you have alluded to assistants?

A Yes, sir.

Q You have a regular organized office force for the purpose of experting books?

A Yes, sir.

Q Is Mr. Morrison of your force?

A He is not.

Q Was the young man who accompanied Mr. Morrison to the

Receiver's office at the first call, of your force?

A He was not.

Q At whose suggestion did you send Mr. Morrison?

A I always try to take somebody who knows something about the business. Mr. Seligman suggested to me " Mr. Morrison may be a good man"; I said " Very well send Mr. Morrison". I tried to get Mr. Henry Ware who used to be employed by the Edison people, - the very man whom I wanted to employ to work with me ; I have only just learned that Mr. Ware is employed by the Crocker Wheeler Company and I can't get him. The consequence is I shall have to do it myself with an entirely outside force, and have decided upon a man who is a public accountant, besides myself.

Q Then you did not employ Mr. Morrison or his assistant?

A No, I have decided that in view of the fact that there were objections taken to it at the time that he went over, - he went over with the understanding that he were to go---

MR. KEASBY: You misunderstood the question;

he asked you if you did not, not if you would not.

Q Did you employ him?

A I left that for Mr. Seligman to do.

Q How do you account for the fact that Mr. Morrison stated that he was not in your employ?

A That he stated that he was not in my employ?

Q Yes?

A I don't know anything about,- I don't know what statement he made.

Q You purchased your stock you stated in the Fall of 1892?

A Well that was the 100 shares I think I purchased about that time.

Q Did you look into the affairs of the company at that time at all?

A I did not. It was stock that was left over; I was dealing at that time in the stock a good bit; back and forth, and to be perfectly frank about it I did not know I had that 100 shares of stock until I came across it among some papers the other day.

Q You had been dealing in North American stock, had you?

A Yes, sir, I used at that time to deal a good bit in outside securities.

Q How long had you been dealing in North American stock prior to the time of this purchase?

A I think I dealt in North American stock, about 1890 up, back and forth, here and there 100 or 200 shares.

Q As a broker or negotiator?

A Well, some for myself; I used to do those little things.

Q Did you own stock at a period prior to the purchase of this stock?

A No.

Q You had dealt in it for others?

A You mean prior to 1892?

Q Prior to the time of the purchase---

A I had dealt in it from 1890 up; prior to that date I don't think I ever had any of the original stock at all.

Q (MR. KEASBY) He wants to know if you owned any stock prior to 1892?

A I don't know whether it was 1891 or 1892; it was when the stock had commenced to drop down to 20.

Q (FURTHER CROSS) You didn't commence to deal with this stock until after it commenced to tumble?

A Commenced to tumble; thought it was cheaper then.

Q Did you know who was President of the company when you got this stock in 1892?

A No, but I think it was Edison if I am not mistaken.

Q Did you know at the time you made the purchase?

A No, I don't think I looked at it that close.

Q You have heard of Mr. Lippincott?

A Yes, sir.

Q And knew generally about the North American Phonograph Company?

A Generally about the company.

Q Did the fact that the stock was falling on the market indicate to you that the company was failing?

A No, for I never knew that there was three hundred and thirty bonds issued until Mr. Boston called my attention to it, about 10 or 12 days ago.

Q You made no enquiry?

A I did not.

Q At the time you bought the stock? You did not know as a matter of fact these bonds had then been issued?

A No, sir.

Q When did you learn the Receiver had been appointed?

A That I don't know exactly. I knew it was in a Receiver's hands as such things go on the street, I paid no attention to it, sometime in the year 1894, I don't know exactly when I was absent a good deal in the year 1894.

Q When I remind you that the Receiver was appointed in the latter part of August 1894, can you recall how soon after you learned of the Receivership?

A I can fix my dates pretty nearly in August 1894. I came back from Chicago on the last day of July, 1894; I left New York I think on the 10th day of October, 1894.

Q During the interval you learned of the Receivership?

A It must be during that interval, about, or maybe when I came back from Chicago, or the beginning of November; I don't know exactly.

Q Did you put yourself in communication with the Receiver in any way?

A I did not.

Q Did you ever bring to his attention the fact that you thought the investigation and examination that you now ask for should be made?

A No, I was too busy a man about those days to pay attention to anything of that sort.

Q When did you first bring this to the attention of the Receiver?

A About the examination, proper?

Q Yes.

A General conversation, that is about I think---

Q No, when did you first bring it to the attention of the Receiver?

A I think about the 3rd day of April, if I am not mistaken of this year.

Q Had you heard anything prior to that time about the difficulties between the Edison United Company and the North American Company?

A I did not, except what I read in the paper, that there was some trouble about buying or selling machines, and I think that I read that in the World while coming on a train from Philadelphia to New York, in the New Jersey edition.

Q Do you remember when that was?

A I think that must have been on one of my trips home, from the West, over the Pennsylvania and Central; I think that must have been somewhere about last summer. I read it like anything else, it just passed.

Q About the time of the appointment of the Receiver?

A Well if you say he was appointed about August 1894, no; I think it must be before that time.

Q You have seen quite a good deal of talk in the newspapers have you not about the North American Phonograph Company?

A Well I have seen less than what others told me.

Q Had your attention called to these newspaper controversies?

A Yes, sir.

Q But you never noticed anything about this controversy with the Edison United people?

A No. Let me say right here that during the year of 1894

I was absent from the City from the middle of February until the end of March; and then again from the beginning of April until the 10th day of May; and then again from about the end of May until the last day of July; and then again from the beginning of October, until the last of November I should judge.

Q What occasioned the casual conversation about the North American Phonograph Company in Mr. Seligman's office that you have referred to?

A That morning?

Q Yes, sir.

A I think the thing came up on my asking "What is the matter with this North American Company, I think they want to sell out".

Q When did you hear that?

A From the notice I got, I assume,. I said "Is the thing all busted like the nickle in the slot, wiped out; I think somebody ought to stop this business, someday". I said "I would like to do it if I was not so busily pressed for time, I would like to get hold of these books".

Q Was there anything further said?

A Well Seligman said "Why don't you do it". I said "All right, will you take it up". And he said he would.

Q Did Mr. Seligman say anything about having any other interest in the North American Phonograph Company at stake?

A He did not, in fact the conversation, - I did not go to Mr. Seligman's office for that purpose; I went there for the purpose of consulting with Mr. George Seligman, to be present at my office to take depositions on the 9th day of April. I suppose if I hadn't met Mr. Theodore Seligman at the time, the whole thing might have slipped my memory.

Q The petition that you filed with the Chancellor was filed on the suggestion of the Receiver was it not?

A At the suggestion of the Receiver?

Q Yes?

A How do you mean?

Q Did not the Receiver in a communication to you suggest that you make application to the Chancellor for the---

A That was the second petition which was filed at your instance. In your letter you stated to me, your last letter, that you would not allow an examination of the books to proceed unless ordered by the Court to do so.

Q My recollection may be wrong, but it is to the effect that in the first letter I sent you by the hand of Mr. Morrison, I suggested an application to the Chancellor on the following Monday?

A It might be also in that letter; that was the way it--

Oh, that was in the first.

Q Yes?

A Our correspondence took place after that, the further correspondence.

Q Yes?

A Until I telegraphed you. Yes; mixed up two weeks.

MR. KEASBY: Here is your letter.

MR. HARDIN: He and I agree.

THE WITNESS: I have got that in my mind now; merely made a mistake in a date.

Q You do not know as I understand from your testimony that the stockholders of the North American Phonograph Company have approved the issue of the bonds?

A I do not, in fact I am informed that they did not.

Q Having ^{no} such information you do not of course know that such ratification of the stockholders had taken place prior to the purchase of your stock?

A No. Of course if those bonds are valid, ratified by the stockholders, that ought to end it, would it not, as far as the bonds are concerned?

Q I judge you do not know either that the pledge of the Phonograph Company's stock to Mr. Edison was made long prior to Mr. Edison's association with the company as its President?

A I don't know when that was pledged at all.

Q You don't know either whether that was ever submitted to the stockholders?

A I do not.

Q Did you ever take any means of finding out during your period of dealing in the stock, or ownership in the stock, or since?

A I did not; these facts only came to my possession here lately.

Q Only came into your possession when the idea of reorganization occurred to you?

A Yes, sir.

Q You have stated I believe that that is your business, negotiation and reorganization?

A Yes, sir.

Q Of companies. Revivification of corpses, I judge?

A No, post mortems lets call them.

Q What facts did you refer to in the statement of the three reasons why you thought that this examination should be made. Your second reference was to facts that perhaps some people did not know; what facts did you refer to?

A I decline to try the case here; I should show my hand, what I am after.

Q As I understand you you have been ~~put~~^{putting} upon the record what you desire to ascertain?

A I have stated what I desire to ascertain, enumerated it.

Q Is there something else other than what you have stated?

A I might tumble on something in the examination of the books, some idea.

Q You are not willing to indicate at the present time what your real intention is?

A No, sir.

Q And you are unwilling to state at this time what the facts referred to by you that would surprise people, have reference to?

A Only for one reason, and that is, that in examining things one tries to get such information about a property that he can. I want to prevent such information not being found.

Q Are you aware that your request for information is addressed to an officer of the Court?

A I am not.

Q Whose duty is to answer truthfully and rightly all questions he may be asked?

A You mean here at the examination?

Q Yes?

A Perfectly.

Q I mean your request for information to the Receiver?

A I have enumerated my requests.

Q But you have also stated you desire to find some facts that would surprise people?

A My dear sir, I might find a forced balance.

Q Have you any information which leads you to suppose that there is?

A Well, I might find a forced balance for instance

Q What are the facts that you referred to in the second reason that you gave, which you have thus far declined to state?

A Oh, what I might find?

Q Yes?

A Oh, that is a statement made at random simply; we always find things in books of that sort; might find them here just as well as any others.

Q You insist on your unwillingness to indicate to the Receiver your reason?

A I will indicate to the Receiver that I might find things I don't dream of at this moment.

MR. HARDIN: I would like the stenographer to refer to the answer of Mr. Stern on his direct examination to the answer to the question by Mr. Keasby.

THE WITNESS: I think I stated to him that I might find things ~~that~~ might astonish some people didn't I?

Being so directed the stenographer repeated the previous testimony as follows. "Secondly: I think that an examination might bring about facts that some people little dream of at the present time".

THE WITNESS : That is a general remark--- Or I would just as leave ~~xxx~~ state to you particularly.

Q What facts have you in mind that might be discovered that people at the present minute don't dream of?

A What I want to arrive at-is, exactly, in connection with this, how the patent rights and other of the values that have been transferred to this company, which I understand were the sum of \$500,000,- what right Mr. Edison has today to manufacture under such rights; whether he has made any improvements, and whether such improvements have been transferred to this company as per contract which I understand exists.

Q You don't expect that information to be found in the books?

A I do, from contracts and Minutes which ought to be in existence I expect to find it.

Q By books, you include--

A Every scrap of paper that belongs to the company are books of record.

Q I have understood you as referring to account books?

A I don't refer to simply the Ledger, Day Book, &c., I mean an examination of the books, records, Minute Book, correspondence; the Minute Book is a very important book in fact

Q You said Mr. Stern you would like to have a list of the stockholders; have you ever made application to the Receiver for such a list?

A No; in fact it would be useless for me at the present moment, because if there is nothing to reorganize I want to save the money on the postage to send to them.

Q You referred to a desire on your part to ascertain the relations between the North American Phonograph Company and Spencer Trask & Co., What did you mean by that?

A I mean in relation to the circular issued by Spencer Trask & Company at the time that they floated stock, wherein they said there was some \$800,000 cash going into the treasury of the company from that stock, and some \$200,000 additional, later on.

Q Spencer Trask & Company were brokers?

A Yes, sir.

Q Who floated this stock?

A Yes, sir.

Q Have you heard of any suit against Spencer Trask & Company for misrepresentation?

A No. What made me go into this was, when they heard I was advertising for stockholders names they sent for me and wanted to know what I was going to do and what my object was; in fact they were the first ones to respond to the advertisement.

Q I have nothing further?

A Well put that a little different. Their representing it and afterwards gaining the information that that amount of money was in the company's treasury as stated by them in their circular which this gentleman (Indicating) had shown me, made me make the statement that I wanted to look into the relations of this company with these people.

RE DIRECT EXAMINATION.

Q You said that you were unwilling to state what your real intention was, in reply to Mr. Hardin's question as to what you mean by the second reason. Did you mean to say,-

or did you in fact have any ulterior motive?

A I have given it to you there. Mr. Hardin asked the question and I answered it.

Q When you said that you were unwilling to state what your real intention was, did you mean you had any motive except what you have already explained?

A I don't exactly gather your question.

Q Did you understand Mr. Hardin's question?

A I took Mr. Hardin's question to be as to whether I meant thereby to implicate somebody.

Q Did you refer to anything which you are not willing to mention at present?

A No. I stated afterwards that I had reference to this question in my mind, that I might find forced balances or transactions which were not strictly legal. I believe I said that afterwards in answer to his questions; I amplified it more than that.

Q That is all.

WILLIAM HOLZER produced as a witness on the part of the petitioners being duly sworn to speak the truth the whole truth and nothing but the truth and being examined by Edward Q. Keasby Esq., testified as follows.

DIRECT EXAMINATION.

Q Where do you live?

A I live in New York.

Q Are you the owner of any shares of stock of the North American Phonograph Company, and if so how many?

A I am the owner of 1205 shares in my own name, and about 849 shares in other names.

Q How long have you been a stockholder?

A Since 1892, the early part of 1892.

Q And how long have you held these 1200 shares?

A I started to purchase stock in the early part of 1892; I think the last that I purchased that stand in my own name was up to somewhere about the middle of 1893.

Q On whose recommendation did you purchase this stock?

A. On the recommendation of Mr. Tate, one of the officers of the North American Phonograph Company:

Q Did you receive any notice from the Receiver of any plan for the disposal of property of the company?

A I did not, only in the early part of April a friend of mine in New York, a stockholder in the company, showed me one of the notices.

Q A notice relating to what?

A This is the notice (Producing paper).

Q Dated March 28th?

A Yes, sir; the notice of the Receiver, reporting the sale.

Q Does that state that Mr: Edison had made an offer of \$125,100 for the entire assets of the company?

A It does.

Q And recommends its adoption. Did you take any measures,- did you receive any notice of what the property consisted of in the hands of the Receiver?

A No, sir.

Q Or whether any bids were solicited?

A I did not.

Q Were you at all familiar with the property and assets of the company?

A No; I was not familiar with the assets of the company or anything connected with it; I was somewhat familiar with the phonograph. May I state how I came about---I met Mr. Tate; Mr. Tate says "Helloe Holzer, I see you have bought,- you are in the stock of the Automatic Phonograph Company, the Automatic Company". I said Yes, I have got about 36 shares of that"; Oh, he says, you don't want to put your money into that, he says, come and put your money in the North American Phonograph Company and you will make

money out of it.

Q And then you bought a large amount of stock?

A Then I started to buy stock.

Q Did you hear about that time that the patent rights were sold to the company by Mr. Edison for a certain large sum?

A Yes, sir, I heard they were sold for about \$500,000.

Q And have you any information as to what has become of those patent rights?

A I heard that---

Q With respect to the sale of stock that represents them, or anything of that kind?

A I heard there was a sale of some matters over in Jersey sometime ago, over in Jersey City.

Q With what result?

A That Mr. Edison had purchased them for \$10,000.

Q Do you desire to make any investigation with reference to that or any other matters and to examine the books of the company?

A Well in 1893 I used to call at the office of the North American Company about once or twice regularly for several months, and I would enquire as to when they were going to have the things going, and they would tell me "Next month"; and they kept putting it off from month to month,

and finally I kept going there and going there until about March of 1894, and I met Mr. Edison there; I went to see him, I had made an appointment to meet Mr. Edison in New York; I met him at the North American Phonograph Company's office; as I were there I enquired for Edison; he said he was there and as the door opened I saw Mr. Bush and Mr. Tate and several other gentlemen connected with the company, I says to Mr. Edison says I "I have got quite a block of this stock here, how is it." He says "I don't know, I am here to look this matter up". That was I think in March of 1894; and I kept going there and going there and about the time they were to pay the interest on the bonds I asked Mr. Tremaine, says I "Mr. Tremaine has the company got enough money to pay the interest on the coupons or bonds coming due", and he says "Yes", he says "everything ready for it, waiting for Mr Tate to come back" And one of the bondholders I met there on a certain occasion, he was enquiring and I said to him says I "What about the payment of the interest on these bonds?" Well he says the checks are all made out and just waiting for Mr. Tate to return, and then after, - as soon as he returned the checks will be sent out. That was sometime in 1894, I think about May, April or May of 1894,

somewhere along there I think it was, I am not sure, but I know that the bondholders were looking up,- the time had passed for them to pay the interest on the bonds and they were looking up pretty sharp, especially one of the bondholders that I am personally acquainted with---

Q Well were those checks ever sent out?

A They were never sent out to my knowledge.

Q That was six months before the Receiver was appointed was it not?

A About that. Then a certain bondholder among those that enquired, he says, if they don't pay the interest on these bonds, we will have this thing put in the hands of a Receiver, I says "Well, see, I am not a bondholder", I am a stockholder, you want to be very careful, I don't want to be wiped out.

Q Well, then did you sign a petition for the examination of the books in ~~the~~ hand of the Receiver?

A I did.

Q Have you read that petition?

A I did.

Q Is that true?

A Yes, sir.

Q Do you desire to have an examination made in connection with the examination on behalf of Mr. Stern?

A I do.

Q Did you ever endeavor to ascertain any other matters about the business management of the company?

A Well during the time that I would call at their office enquiring as to when they were going to have the things made, I would commence to gather what information I could from parties connected with the concern, and they would tell me everything was prosperous, doing a big business, and that Mr. Edison had a new ~~new~~ machine and as soon as they got rid of the old machines, the new machine was going to be introduced, and this new machine would be more of a machine for commercial work.

Q Who told you that?

A Mr. Tate, A.L. Tate.

Q When was that?

A That was sometime in the Spring of 1894.

Q(Mr. Saligman) That is the same Mr. Tate that advised you to buy the stock of the company?

A Yes, yes, sir.

Q (Mr Keasby). Who has had the management of the company ?

A I think the management of the North American Phonograph Company was under, practically under Mr. Tate's hands.

Q What has Mr. Edison been in reference to it?

A Mr. Edison as I understand is the President of the company. My certificates are all signed "Thomas A. Edison, President".

Q Do you know anything about the relations between that company and the Edison Phonograph Works? A. , - I have

A heard from some of the officers of the company that they had their regular contracts between the North American Phonograph Company and the Edison Phonograph Company at Orange. I took it for granted that if Mr. Edison was President of the company everything was in good shape, and the contracts of course would be made very strictly and securely for both parties.

Q Are you satisfied that this bid of \$125,100 be accepted, or do you wish to examine into it?

A I wish to examine into it. I was led to believe on quite a few occasions that it was a commercial, - it was commercial, the business was commercial and there was lots of money in it, and with the new machine they were going to bring out they expected to resume their dividends again.

Q Was any of the stock that you bought purchased from any of the Directors of the company?

A I think that the first lot of stock that I bought was some

of Mr. Lombard's stock. He was I think President of the company at one time, or Vice President,- Vice President I think, I am not sure of that, Mr. Lombard.

Q Are you acquainted with the nature of the business and do you know how far it depends on the proper conduct of the North American Phonograph Company's business with reference to the Phonograph Works and to the maintenance of the patents all entire?

A I am not well acquainted with the nature of the business; I have had occasion to manipulate one of them on several occasions.

Q You are not familiar with the business of manufacturing inreference to the patents?

A I am not.

Q Are you capable of making any examination of the books personally or would you require an expert?

A I would require an expert; I am no book-keeper myself.

Q That is all.

CROSS EXAMINATION (By Mr. Hardin).

Q When did you buy your stock?

A I started buying stock in 1892, early part of 1892; I held,- I believe it was Mr. Lombard's stock I bought in 1892; I held that up to about around June, I thought best

to have that put in my name, about June first, somewhere along there, it was in the month of June 1892 that I had the stock put in my name, started to have it put in my name.

Q You had heard of these bonds that had been spoken about prior to the Receivership had you not?

A Heard of the bonds?

Q Yes, that there were bonds existing?

A Yes, sir.

Q Did you know that before you bought stock?

A No, sir.

Q When did you find that out?

A I found it out through a lot of bonds that were going to be sold at auction.

Q The Lippincott bonds?

A I don't know what they were.

Q When did you learn of the Receivership?

A I think I learned of the Receivership, of the Receiver being appointed, just about as quick as you were appointed; that was in the Chancellor's room at the time, I was present there.

Q Have you ever addressed any request to the Receiver to make the investigation that you want made?

A Only,- no, not outside of this petition.

Q The petition?

A Yes, sir.

Q That is all.

A By the way I called on you several times you know.

Q Oh yes.

A You recollect me.

Q Yes.

A I asked a few questions of you, and of course you told me, you were not in a position to answer just now, you hadn't had time to look over things.

Q But you never addressed any written communication---

A No, sir.

Q Or put the thing in formal shape?

A No, I simply called personally.

Q That was a good while ago, was it not, the last time you saw me?

A Well I guess it was a very short time after you were appointed Receiver, not more than three or four weeks.

Q Yes. I remember you very well.

A I met Mr.--a gentleman who has a machine shop over on Washington Street, you recollect, or not a machine shop a manufacturing place on Washington Street below Market.

Q Clawson?

A No.

Q Chase?

A Yes, I met Mr. Chase there.

MR. KEASBY: I think that is all.
That is all the witnesses we have today.

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In Chancery of New Jersey.

Walter Cutting,
executor, and another

against

North American Phonograph Co.

Answer of Charles A. Boston to
petition of Thomas A. Edison.

Original
Charles A. Boston
in person

179 Prospect St., East Orange, N.J.

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*This April 29th 1895
Allen M. Bennett*

Euro. Y-33, - 463

IN CHANCERY OF NEW JERSEY.

----- X
WALTER CUTTING,
Executor,

and another

against

THE NORTH AMERICAN
PHONOGRAPH COMPANY.
----- X

On Bill of Complaint &c

To the Honorable Alexander T. McGill,
Chancellor of New Jersey.

2
The answer of Charles A. Boston, a stockholder of
the North American Phonograph Company, on behalf of himself
and all other stockholders similarly situated who may come
into this proceeding and share the expenses thereof, to the
petition of Thomas A. Edison herein relative to the recom-
mendation of the Receiver that the bid of Thomas A. Edison
be accepted and all of the rights and assets of the Com-
pany now unsold be conveyed therefor to the said Edison,
and for supplementary answer to said recommendation of the
Receiver, respectively ^{fully} shows unto your Honor

That such bid should not be accepted and further
that no sale of the rights and assets of the Company should
be made until this Court is fully informed as to the na-
ture, extent and approximate value of said rights and as-
sets, to the end that all bona fide creditors of the cor-
poration and all stockholders be as fully protected in

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their rights as the nature of the case will permit. Boston

And the said Boston shows as reason for his objection and recommendation and for the prayer of this his petition, so far as the same is a petition,

I. - That he, Boston, is a stockholder of the North American Phonograph Company, as set forth in his answer to the petition of the Receiver filed in this cause, on the 15th day of April 1895, to which he refers and which he makes part of this answer.

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II. - That pursuant to the order of the Chancellor herein made on April 17th 1895, said Boston addressed certain interrogatories in writing to the Receiver, a copy of which interrogatories is hereto annexed marked "C.A.B.'s Exhibit #7".

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III. - That the requests of said interrogatories have been granted so far as the time at the command of the Receiver and of said Boston has permitted; but that the line of inquiry was such that in the limited time at the command of the Receiver and said Boston, said Boston was unable to learn all that said interrogatories called for.

IV. - That the results of said examination as they now appear to said Boston, demand in his opinion the closest scrutiny and examination under the direction of this Court and by its Receiver, of the transactions of the Company during its short life, and a postponement of all sales except of chattels, until the rights of the Company shall be ascertained with reasonable certainty.

V. - That the examination made by the said Boston, so far as he has been able to make it, discloses:

That on October 28th, 1887, Thomas A. Edison was or claimed to be the inventor of the phonograph and held letters patent of the United States therefor, issued to him as follows:

#200521 - February 9, 1878.
 #213554 - March 25, 1879.
 #227679 - May 18, 1880.

and had applications pending before the United States Patent Office for other patents thereon, under serial #252800 filed October 19, 1887 and serial #252964 filed October 21, 1887,

and held letters patent of the Dominion of Canada therefor as follows: #3026 dated October 17, 1887 and #9282 dated October 19, 1878.

That on October 28th, 1887, in payment of his subscription to 11960 shares, of the par value of \$100 each, of the capital stock of the Edison Phonograph Company, a corporation of the State of New Jersey, to which he had subscribed at par, Mr. Edison assigned to the Edison Phonograph Company his entire right, title and interest in

and to the patents and applications aforesaid, and further agreed with said Company that for five years he would devote a reasonable amount of his time toward perfecting and improving the inventions aforesaid and enlarging and extending the use and application thereof, and further that in the event of further inventions relating to the phonograph or by means of which its use or application should

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be extended or enlarged, within the period mentioned, he would promptly advise the Company and would prepare and execute the necessary papers to obtain letters patent in the United States and Canada and would assign the applications and patents to the Company, on payment by the Company of all costs and charges in obtaining patents and conducting experiments; and the Company granted unto Mr. Edison the exclusive right, authority and license under the letters patent aforesaid to manufacture said inventions and agreed to grant similar license under subsequent patents; and Mr. Edison agreed to equip and furnish a factory for the manufacture of phonographs and supplies and capable of supplying the demands of the Company and that he would promptly fill all orders of the Company at the actual cost of manufacture plus 20%, the cost of manufacture, to be deemed to include cost of labor and material and general expense; and the Company further agreed to pay unto Mr. Edison a royalty of 20% upon all phonographs and supplies sold by it; and Mr. Edison transferred and assigned to the Company all his right, title and interest in and to a certain contract by which he had agreed for value to permit certain persons to manufacture dolls and toy figures;

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That on the 12th day of May 1888 Mr. Edison assigned to the Edison Phonograph Works his license under the foregoing contract and agreed to assign such license as he might thereafter obtain from the Edison Phonograph Company in pursuance of the foregoing agreement of October

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28th, 1887, in consideration of which the Edison Phonograph Works agreed to erect a factory and fill orders under said contract with the Edison Phonograph Company at the actual cost of manufacture, as defined in said foregoing agreement plus 20% of the said cost; and the said Edison Phonograph Works further agreed to assign to Mr. Edison 52% of its capital stock and 52% of any increase of its capital stock within twenty-five years;

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That on the 28th of October, 1887, the Edison Phonograph Company appointed Ezra T. Gilliland its general agent in the United States and Canada;

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That on the 27th of June 1888, the said Ezra T. Gilliland contracted with Jesse H. Lippincott to assign to the said Jesse H. Lippincott his agreement made with the Edison Phonograph Company on the 28th of October 1887 and hereinbefore referred to within twenty days thereafter, and Jesse H. Lippincott, in consideration thereof, agreed to give to the said Ezra T. Gilliland 25 00 shares of the capital stock of a corporation to be known as the American Phonograph Company, which Company was to possess all of the phonograph patents, or beneficial interests therein, of Thomas A. Edison; and the said Ezra T. Gilliland further agreed that any inventions by himself made within fifteen years thereafter were to be assigned to the said Company without further consideration; and thereafter on the 28th day of June 1888, it was further agreed by the said Ezra T. Gilliland with the said Jesse H. Lippincott in supplement to the agreement last mentioned that if the stock of

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such Company should be issued to the original promoters at less than par of \$100 per share the said Gilliland should be given \$250,000 worth of such stock, the worth to be fixed by the price paid by the original promoters, and Lippincott agreed to purchase from Gilliland such stock.

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That the North American Phonograph Company was thereafter incorporated by the said Lippincott and his associates as hereinafter more fully set forth, and became the Company designated in the aforesaid contract of June 27th, 1888, between Gilliland and Lippincott as the American Phonograph Company;

That the right secured to the said Company by the contract aforesaid will not expire until 1903 and is an asset of the North American Phonograph Company which should be taken into a calculation in fixing a price for its assets;

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That on the 28th of June, 1888, Thomas A. Edison entered into an agreement with Jesse H. Lippincott wherein it was recited that Edison was the inventor of the phonograph, and that the Edison Phonograph Company was then the owner of letters patent of Mr. Edison's inventions under the contract hereinbefore referred to dated October 28, 1887, and that the Edison Phonograph Works had then acquired the exclusive right to manufacture phonographs under the contract hereinbefore referred to dated May 12th, 1888, and that Mr. Edison was the owner of a majority of the stock of each Company, and that Mr. Lippincott desired to cause the formation of a corporation to

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acquire the authority to exploit and introduce the phonograph and the graphophone;

Wherefore Mr. Lippincott agreed to buy from Mr. Edison, and Mr. Edison agreed to sell and deliver to Mr. Lippincott the entire capital stock of the Edison Phonograph Company except 150 shares for the sum of \$500,000, and that such stock should be paid for as follows:

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July 13th, 1888	\$10,000
September 1st, 1888	115,000
October 1st, 1888	125,000
November 1st, 1888	250,000

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and that on July 13th, 1888, certificates of the entire stock of the Edison Phonograph Company less 150 shares should be delivered to the Garfield Safe Deposit Company as trustee to deliver to Mr. Lippincott when \$500,000 should be paid as therein provided and the contracts hereinbefore provided for should be executed. It was further recited that 150 shares of the capital stock of the Edison Phonograph Company had been previously sold to Mrs. Mary Hemingway of Boston for \$22,500, and Mr. Edison agreed that he would reserve \$22,500 to buy the said stock and would endeavor to buy it and would transfer it to Mr. Lippincott. In the alternative it was provided that Mr. Lippincott might retain \$22,500 out of the \$500,000 aforesaid, he agreeing to buy the said Hemingway stock, he to protect the interest of Mary Hemingway otherwise and to hold Mr. Edison and the Edison Phonograph Company harmless. It was further agreed that Mr. Lippincott should in twenty

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days from the American Phonograph Company, and within thirty days from the formation of the company the agreements hereinbefore referred to, to-wit, the contract of Mr. Edison with the Edison Phonograph Company, dated October 28th, 1887, and the contract of Mr. Edison with the Edison Phonograph Works, dated May 12th, 1888, should be so modified as to admit of making contracts between Mr. Edison and the new company and the Edison Phonograph

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Works and the new company according to forms thereto annexed; and it was provided that the consideration to Mr. Edison should be the payment of \$500,000 and the execution of the said contracts by the American Phonograph Company. It was further provided that if there should be a default in any payment for ten days or if the American Phonograph Company should fail to execute said contracts both Mr. Edison and Mr. Lippincott should be discharged from the obligations of this contract and the Garfield Safe Deposit Company should deliver to Mr. Lippincott one share of the said

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stock of the Edison Phonograph Company for every \$100 paid to Mr. Edison and should deliver the balance to Mr. Edison, and that the contracts executed by the American Phonograph Company should be null and void after default and Mr. Lippincott agreed to purchase the capital stock of the Edison Speaking Phonograph Company so far as he might be able and to save Mr. Edison harmless against claims by it, or its stockholders, and Mr. Edison agreed on the completion of this contract to assign his 1200 shares of the Edison Speaking Phonograph Company to Mr. Lippincott and to

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procure 5 shares owned by one Bachelor;

25

That thereafter on the 14th day of July, 1888, a company was organized under the name of the North American Phonograph Company for the purposes outlined in the foregoing contracts with reference to the corporation to be formed therein styled the American Phonograph Company; the incorporators were Jesse H. Lippincott, Thomas R. Lombard, George H. Fitzwilson, George S. Evans and John Robinson, each of whom subscribed to 80 shares of the capital stock of the said corporation of the par value of \$100 each;

26

That on the 17th day of July 1888, Jesse H. Lippincott entered into an agreement with the North American Phonograph Company wherein he recited that he then owned or controlled or then had the right to use letters patent of the United States numbered 200521, 201760, 213554, 227679, 382414, 382416, 382417, 382418, 382419, 382462 and 386974, and other inventions of Mr. Edison relating to phonographs, and that Mr. Lippincott was then the sole licensee of the American Graphophone Company under letters patent of the United States numbered 341212, 341213, 341214, 341287, 341288, 374133, 375579 and 380535, and also the inventions which are or then were or thereafter might be embodied in the graphophone thereafter to be designated as the Phonograph Graphophone; and that the North American Phonograph Company was organized for the purpose of exploiting and introducing the said instruments

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and in consideration of \$6,560,000 paid by the North American Phonograph Company to Lippincott, not in cash, but by issuing to him \$6,560,000 in full paid capital stock of the North American Phonograph Company, and the payments hereinafter referred to in cash, Mr. Lippincott sold to the North American Phonograph Company all rights which he had or might thereafter have to use the patents of Mr. Edison relating to phonographs, re-issues, extensions and rights to be conferred on the North American Phonograph Company by the agreement between Mr. Edison and Mr. Lippincott,

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dated June 28th, 1888, and hereinabove set forth together with all of the stock of the Edison Phonograph Company and all of the rights of Mr. Lippincott in the graphophone under a contract dated March 26th, 1888, and the North American Phonograph Company assumed and agreed to make all payments for instruments &c. and to carry out the agreements made by Mr. Lippincott in respect to instruments, supplies &c. and the conduct of business respecting the exploiting and introduction of the graphophone; and Mr.

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Lippincott agreed to procure for the North American Phonograph Company all authority to permit the handling and exploiting of the phonograph and graphophone together, and Mr. Lippincott agreed to procure for the North American Phonograph Company the authority required from the Edison Speaking Phonograph Company, and to protect the North American Phonograph Company from interference therefrom but at the expense of the North American Phonograph Company.

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if a license fee or royalty should be paid, but that no stock of the Edison Speaking Phonograph Company was to be transferred to the North American Phonograph Company, and it was understood that Mr. Lippincott assigned no graphophone stocks; and the North American Phonograph Company further agreed to pay to Mr. Lippincott \$200,000 in cash and Mr. Lippincott agreed to procure from the Edison Phonograph Works a contract to manufacture, and further to procure from Mr. Edison a contract as to marketing phonographs, patents, future inventions &c., and that Mr. Lippincott and the American Graphophone Company should make a further agreement, and Mr. Lippincott made a covenant of further assurances; and it was further provided that this agreement should be supplemented by a formal agreement to be drawn by J. Adriance Bush, Esquire;

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That on July 17th, 1888, Ezra T. Gilliland, in consideration of \$1, and for other valuable considerations, conveyed to Jesse H. Lippincott all of his right, title and interest secured to him by the contract between the Edison Phonograph Company and Ezra T. Gilliland, dated October 28th, 1887, and hereinbefore referred to provided that if Mr. Lippincott should fail to purchase the stock of the North American Phonograph Company in accordance with the terms of the agreement between Gilliland and Lippincott, hereinbefore referred to under date of June 28th, 1888 (wherein the said company is styled the American

Phonograph Company) the right, title and interest of Lippincott should be proportioned to the whole as the amount paid by Lippincott bore relation to the sum of \$250,000;

That on July 17th, 1888, in pursuance of the terms of the contract between Mr. Edison and Mr. Lippincott hereinbefore referred to under date of June 28th, 1888 and the agreement therein to modify the terms of the agreement between the Edison Phonograph Company and Thomas A. Edison, the Edison Phonograph Company released Mr. Edison from his obligation to transfer and assign to it any new and further inventions, and the terms of the agreement between Mr. Edison and the Edison Phonograph Company hereinbefore referred to under date of October 28th, 1887 were so modified as to admit of the sale of phonographs or supplies manufactured by Mr. Edison to the North American Phonograph Company, and Mr. Edison released the Edison Phonograph Company from its obligations to pay royalties and percentages of profit to him. This contract was stated to be made on the assumption that the agreement between Mr. Lippincott and Mr. Edison hereinbefore referred to under date of June 28th, 1888, should be carried out to the satisfaction of both parties thereto, and that the agreements between Mr. Edison and the North American Phonograph Company and the Edison Phonograph Works should be duly executed. It will appear in subsequent parts of this answer that the agreement between Mr. Lippincott and Mr. Edison was subsequently carried out to the satisfaction

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of both parties and that the agreements provided for were duly executed.

Wherefore Mr. Edison's present contention in his petition that he remains under obligation to convey and assign his patents for improvements upon the phonograph to the Edison Phonograph Company is, as the said Boston verily believes, without substantial ground.

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That on the 1st day of August, 1888, Mr. Edison, the North American Phonograph Company and Mr. Lippincott entered into a contract with each other wherein it was recited that the North American Phonograph Company and Mr. Lippincott then possessed rights in both the phonograph and the graphophone and in which, among other provisions, it was agreed that any invention or improvement made by Mr. Edison within fifteen years from August 1st, 1888 on the phonograph should be assigned to the North American Phonograph Company without further consideration, and that any invention made by Mr. Edison within the said

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fifteen years relating to a special phonograph or a special extra for the phonograph which is sold as an extra such as the manufacture of duplicate records of music, novels &c. or any invention by which the use of the phonograph is enlarged or by which it is adapted for uses other than those for which it was then available, should be assigned to the North American Phonograph Company, and that the North American Phonograph Company should pay to Mr. Edison a royalty of 15% computed on the manufacturer's price to the Com-

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pany of every special extra, special extra duplicate record or apparatus embodying any invention by which the use of the phonograph is enlarged or by which it is adapted to uses other than those for which it was then available, clocks to be exempt from all contracts, and that all patents issued on said inventions should belong to the Company and all expenses of procuring the same should be paid by it;

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Wherefore the said Boston charges that all patents and inventions made by Mr. Edison relating to the phonograph since August 1st, 1888, are the property of the North American Phonograph Company and should be assigned to it and should be taken into consideration and specified in any advertisement for sale of the assets of the North American Phonograph Company; and the said Boston is informed and believes that Mr. Edison has made inventions and secured patents under the provisions of the agreement aforesaid without assigning the same to the North American Phonograph Company, and Mr. Edison's petition shows that some of such patents have been assigned by him to the Edison Phonograph Company;

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That in the agreement of August 1st, 1888, hereinabove referred to, it was agreed that Mr. Edison might draw from the North American Phonograph Company for experiments during the first year \$15,000, during the second year \$10,000, during the third year \$7,500, and from the fourth to the thirteenth year inclusive \$5,000 each, such expenses to be paid on vouchers showing the actual

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net cost with no profit to Mr. Edison or any company in which he is interested. It was further provided that in case Mr. Lippincott should fail to carry out his agreement of June 28th, 1888, with Mr. Edison, this contract should be null and void, but it will appear hereafter that Mr. Edison thereafter fully released Mr. Lippincott from the obligations of the contract of June 28th, 1888;

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That on the 1st day of August, 1888, the North American Phonograph Company and Mr. Lippincott entered into an agreement with the Edison Phonograph Works whereby the North American Phonograph Company granted to the Edison Phonograph Works the exclusive right to manufacture and the Edison Phonograph Works were to manufacture phonographs and supplies at the actual cost of manufacture plus 20%, the cost of manufacture to be deemed to include the cost of labor, material and general expense, and included in general expense should be 5% of the cost of labor and material for depreciation of plant; and it was provided that the books of the Edison Phonograph Company should be open to the North American Phonograph Company; and it further provided that in case Mr. Lippincott should fail to pay \$500,000 to Mr. Edison, as provided in the contract of June 28th, 1888, this contract should be null and void. It appears hereafter that Mr. Edison released Mr. Lippincott from the obligations of his contract of June 28th, 1888, and the Edison Phonograph Works still insists upon the validity of this contract of August 1st, 1888.

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Wherefore all question of its being null and void by reason of any failure of Mr. Lippincott to fulfill his obligations to Mr. Edison is immaterial.

That on the 10th day of October, 1888, a contract was made between Mr. Edison, the Edison Phonograph Works, the North American Phonograph Company and Mr. Lippincott confirming the aforesaid two contracts of August 1st, 1888, and so modifying them as to give to the Edison Phonograph Works, instead of to Mr. Edison, the exclusive right to manufacture phonographs and supplies for export;

And the said Boston charges that it follows from the foregoing several contracts to which Mr. Edison and the corporations in which he was interested to a large extent were parties that he was fully cognizant of the rights of the North American Phonograph Company in and to all of the capital stock of the Edison Phonograph Company, and especially of its rights in and to the 11850 shares of the said stock which had been transferred by Mr. Edison to Mr. Lippincott;

That on the 30th day of October, 1888, Mr. Lippincott, the North American Phonograph Company and Thomas A. Edison entered into an agreement wherein it was recited that Mr. Lippincott was indebted to Mr. Edison in the sum of \$175,000 on the said Lippincott's two promissory notes for \$87,500 each, payable November 1st, 1888, and December 1st, 1888, and that Mr. Lippincott and the said North American Phonograph Company desired to obtain an

extension of the said notes and that Mr. Edison was willing to extend the payment on terms, and it was agreed that Mr. Edison should be released from his obligation to purchase the Hemingway stock, and he consented that Mr. Lippincott's debt to him should be reduced by \$22,500 to \$152,500, at which amount the debt was thereupon stated and fixed, and Mr. Edison agreed to extend the payment of the remaining \$152,500 as follows:

\$43,750 to be paid January 5th, 1889,
 \$43,750 to be paid February 1st, 1889
 \$65,000 to be paid March 1st, 1889;

and it was provided that three promissory notes of Mr. Lippincott bearing interest at 6% and endorsed by the North American Phonograph Company, should be given to Mr. Edison, and as security therefor Mr. Lippincott delivered to Mr. Edison 11850 shares of the stock of the Edison Phonograph Company;

And the said Boston charges that the said contract was a device for compelling the North American Phonograph Company to assume the debt of Jesse H. Lippincott, who was the President of the said Company at that time, and to make the North American Phonograph Company pay for property for which it had already issued \$6,560,000 of its capital stock besides having paid \$200,000 in cash; and that Mr. Edison had full knowledge that the 11850 shares of stock of the Edison Phonograph Company were the property of the North American Phonograph Company and not of Jesse H. Lippincott, and that the en-

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dorsement of the North American Phonograph Company was without consideration and void, and that the said agreement was a fraud upon the rights of the stockholders of the North American Phonograph Company;

That the last mentioned agreement further provided that Mr. Lippincott should give to Mr. Edison a full paid certificate of the capital stock of the North American Phonograph Company for 6100 shares on certain conditions. This agreement was subsequently cancelled as hereinafter more fully shown.

That on the twenty-second day of July, 1889, the parties to the last mentioned contract, cancelled the same in an agreement wherein Mr. Lippincott re-delivered to Mr. Edison the said Eleven thousand eight hundred and fifty (11,850) shares of the Edison Phonograph Company as security for the existing indebtedness of Mr. Lippincott to Mr. Edison which was therein fixed at \$65,000. with interest from December 1st 1888, and Mr. Lippincott agreed to give to Mr. Edison his promissory note therefor payable October 31st., 1889, to be made by Mr. Lippincott and endorsed by the North American Phonograph Company, and Mr. Lippincott also re-delivered to Mr. Edison sixty-one hundred (6100) shares of the stock of the North American Phonograph Company;

And the said Boston charges that the re-delivery of the said 11,850 shares of the Edison Phonograph Company as security for Mr. Lippincott's debt to Mr. Edison was a device intended to make the North American Phonograph Company pay the debt of its President Jesse H. Lippincott, and to pay twice for the same property, it already having purchased the said stock as set forth more fully hereinabove, and that Mr. Edison had full knowledge of that fact. The terms and conditions upon which the 6100 shares of ^{the Capital Stock of the} North American Phonograph Company were delivered to Mr. Edison are defined in a contract dated July 30th, 1889, which will be more fully adverted to hereinafter;

That on the 31st day of October, 1889, in an agreement between Mr. Lippincott, The North American Phonograph Company and Mr. Edison, and again, on December 31st., 1889, in an agreement between the same parties, and again on April 1st, 1890, in an agreement between the same parties, the said stock was repledged, but always for the debt of Mr. Lippincott to Mr. Edison;

And the said Boston charges that the pledge under which the stock of the Edison Phonograph Company belonging to the North American Phonograph Company was sold by Thomas A. Edison on the thirteenth of August, 1892, was an extension of this invalid claim and was in furtherance of the design known to Thomas A. Edison to compel the North American Phonograph Company to pay the debt of its President, Jesse H. Lippincott, to Thomas A. Edison for property which the North American Phonograph Company had already bought from Jesse H. Lippincott; that the said sale and ^{pledge were a} fraud upon the creditors and stockholders of the North American Phonograph Company; that the said pledge was void and that the North American Phonograph Company is equitably entitled to the entire 12,000 shares of the capital stock of the Edison Phonograph Company and to all the rights which its ownership thereof carries free and clear from all claims whatsoever of the said Thomas A. Edison by reason of all and singular the pledges aforesaid and the sale to himself in pursuance thereof.

WHEREFORE, in any sale of the rights and assets of the North American Phonograph Company it should be made to fully appear that this is one of the assets disposed of;

That on the 30th of July, 1889, Mr. Lippincott agreed with Mr. Edison as a supplement to the contract between Mr. Edison, The North American Phonograph Company and Mr. Lippincott, dated August 1st, 1888, and herein before referred to; that Mr. Edison should give such further time to the North American Phonograph Company that the total time devoted by him to the North American Phonograph Company between August 1st, 1888, and August 1st, 1890, should amount to substantial^{ly} one-half of his entire time, and that for at least three years thereafter until August 1st, 1893, he should make experiments and^{the} improvements in Phonograph a matter of regular and assiduous thought and experiment, preference being had to his other engagements and duties, without remuneration except as in this contract provided, and the said agreement provided that the said Edison should assign on the request of Lippincott^{the} patents and improvements acquired by him between July 17th, 1888, and August 1st, 1888; and Mr. Lippincott compensated Mr. Edison by giving him 6100 shares of the stock of the North American Phonograph Company on the following conditions:

a Mr. Lippincott intended to offer to the public enough of the stock of the North American Phonograph Com-

pany to realize one million dollars before December 31st, 1889;

b That Mr. Lippincott was not decided at what price he should offer the same, but he assumed at \$25.00 per share;

c If not offered prior to December 31st, 1889, or if offered at less than \$25.00 per share or not enough be sold to realize one million dollars, then Mr. Edison on December 31st, 1889, should acquire the absolute ownership of the said stock;

d In the event that the average price at such sale should be less than \$25.00 per share Mr. Lippincott was to deliver to Mr. Edison enough stock to make \$152,500 and in the event that more than \$25.00 per share should be realized Mr. Edison was to return enough of the said stock to Mr. Lippincott to reduce his holding to \$152,500

That on December 31st, 1889, the time limit by the said agreement for the public sale of the said stock under the terms of the said agreement was extended to April 1st, 1890;

That in pursuance of the said agreement on or about the 5th day of February, 1890, the said stock was offered to the public for subscription at the price of \$75.00 a share by Messrs. Spencer, Trask & Co., Bankers of New York, Providence and Albany, Messrs. George Fox & Sons, Bankers, Philadelphia, Pa., and Messrs. Adam Blodget & Co. of Boston, in a circular in which they severally stated that they had verified the statement

of facts contained in the circular letter which the said Boston has already annexed to his Answer herein filed on April 15th, 1895 and therein marked C. A. B.'s Exhibit No. 1;

WHEREFORE, the said Boston charges that Mr. Edison incurred the obligation to return to Mr. Lippincott 4,066 shares of the capital stock of the North American Phonograph Company in pursuance of the aforesaid contract between Mr. Lippincott and Mr. Edison dated July 30th, 1889; and that in any adjustment which shall be made between Mr. Edison and the North American Phonograph Company the right of the North American Phonograph Company to be subrogated to Mr. Lippincott with reference to such stock should be taken into full consideration;

And the said Boston further charges that by reason of all matters herein before set forth, Mr. Edison is chargeable in his relations with the North American Phonograph Company with the knowledge of the statements contained in the aforesaid circular letter hereinbefore referred to as 'C.A.B.'s Exhibit No. 1'; and that no adjustment between Mr. Edison and the North American Phonograph Company should be permitted to prejudice the stockholders of the North American Phonograph Company who became such in answer to the invitation of the said subscription and the said circular letter; and that

the acknowledgment and ratification by this Court of the validity of the pledge of the 12,000 shares of the capital stock of the Edison Phonograph Company to Mr. Edison as herein before set forth would be a distinct and irreparable violation of the rights of such stockholders and that in any adjustment which may be made between Mr. Edison and the North American Phonograph Company these facts should be taken into full consideration and given full weight;

That in characterizing acts as fraudulent and prejudicial hereinbefore and hereinafter the said Boston merely gives to such acts their legal effect as he understands them and he does not wish to be understood as criticizing or discussing the motives of any person connected therewith or the moral rights and obligations of such person;

That notwithstanding the agreement of August 1st, 1888, whereby it was provided that Mr. Edison should draw for experiments during the first year thereafter \$15,000 and during the second year thereafter \$10,000. and during the third year thereafter, \$7500. aggregating \$32,500.. In January, 1891, Mr. Edison made a claim against the Company for experiments to the amount of \$79,251.62 in settlement of which thereafter Mr. Edison received 79 \$1,000. bonds of the North American Phonograph Company and \$251.62 in cash, and Mr. Edison has filed a claim with the Receiver for the amount of the said bonds as a subsisting debt of the North American

Phonograph Company;

And the said Boston charges that before such debt is allowed the consideration thereof should be enquired into and reported to this Court to the end that it may be ascertained whether such amount should not be reduced to \$32,500. and whether by reason of the complete failure of Mr. Edison to assign to the North American Phonograph Company the patents for inventions made as a result of experiments for which the North American Phonograph Company agreed to pay the entire consideration for said bonds has not utterly failed and whether being claimed by the original holder thereof they should not be surrendered to the Receiver for cancellation

That in January, 1891, or thereabouts the claim of the Edison Phonograph Works against the North American Phonograph Company amounted to \$240,530.95 and was settled by the issue to Thomas A. Edison of 146 Bonds of the North American Phonograph Company for \$1,000. each; and the said bonds are now held by the said Thomas A. Edison to the number of 141 and 5 of the said bonds were held by Marion E. Edison, but that the said Boston is informed and believes are now claimed by Thomas A. Edison;

And the said Boston charges that in view of all the facts hereinbefore set forth and that the Edison Phonograph Works is largely owned and controlled by Thomas A. Edison the claim aforesaid on the said 146

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bonds should not be allowed until full investigation of the consideration and validity thereof shall have been made and a full report thereon made to this Court with ample opportunity to be heard thereon to all persons interested therein and that this and other similar inquiries and reports advocated by the said Boston herein, are material at this time in view of that part of the offer of Mr. Edison which looks to the avoidance of a payment by him of his bid in cash;

That the said Boston has been hampered in his investigation by the fact that the minute book of the North American Phonograph Company is not and never has been in the custody of the Receiver ;

WHEREFORE, he regards it as vital. that the Chancellor shall direct the custodian of the book if he can be ascertained to produce the same , by appropriate process and penalty.

VI: That M. A. Nolan appears in this proceeding as an objecting party basing his objection upon his ownership of 22 bonds of \$1,000. each which were issued under the following circumstances. M. A. Nolan was for some time prior to the appointment of the Receiver a Director of the North American Phonograph Company; by the agreement dated July 17th, 1888, Mr. Lippincott sold to the North American Phonograph Company in consideration of \$6,560,000. of the full paid capital stock of the said Company and of \$200,000. thereafter to be paid in cash

all of the capital stock of the Edison Phonograph Company; notwithstanding this fact the Board of Directors of the said Company on or about the 1st day of May, 1892, issued the said bonds which are now presented as a claim by Mr. Nolan for the purpose of acquiring 150 shares of the capital stock of the Edison Phonograph Company hereinbefore designated as the Hemingway stock;

And the said Boston charges that the issue of bonds of the said Company to acquire property for which it had already paid out its capital stock was a transaction which requires the very fullest explanation and it suggests a liability on the part of the Directors of the Corporation which should be fully investigated and explained before one of the Directors presenting a claim against the Company as the holder of such bonds should be given such a standing in Court as will preclude such investigation;

And the said Boston charges that the issue of said bonds by the Board of Directors for such purpose suggests such a right of action in behalf of the corporation against its directors as to render it advisable that this matter should be cleared up to a reasonable certainty before all rights of action of the said Company shall be offered to the highest bidder;

VII: That so far as the said Boston has been able to examine the books of the North American Phonograph Company it appears that shortly after the formation of the North American Phonograph Company, the Company paid to Jesse H. Lippincott the \$200,000. which it had agreed to pay in addition to the issue to him of \$6,560.000. of its capital stock; that from July 17th 1888, to September 30th, 1889, the cash receipts of the North American Phonograph Company principally derived from the sale of franchises amounted to \$1,015,086.86 and its expenditures for the purposes of its business had amounted to \$285,888.56, and that on September 30th, 1889, the Company paid to Jesse H. Lippincott on its voucher No. 602 which the said Boston has been unable to obtain \$724,864.75, leaving cash in the Treasury of the Company \$753.55;

That so far as the said Boston has been able to learn the said payment to Jesse H. Lippincott was without valid consideration;

WHEREFORE, the said Boston contends that a full explanation of the disposition of the said money and the reason therefor should be made to this Court to the end that if any of it can be traced and the rights of the Company thereto established with reasonable certainty that fact may be taken into consideration in any disposition by sale which may be made of the

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remaining rights and assets of the North American Phonograph Company;

VIII: That it appears from such examination of the books of the Company as the said Boston has been able to make that after the 30th of September, 1889, Jesse H. Lippincott's account with the North American Phonograph Company was credited with all receipts from the sale of franchises instead of the same being credited to the profit and loss account or to some other account the balance of which would ultimately be credited to the profit and loss account as one would reasonably suppose; it also appears that a dividend of \$167,000. was credited to Mr. Lippincott in addition to other smaller dividends which apparently were not earned by the Company and thus it appears was Lippincott's account with the Company swelled so that on or about the 1st day of May, 1892, it appeared from the books of the Company that the Company owed Mr. Lippincott a sum equal to or in excess of \$43,000

And the said Boston charges that so far as he has been able to learn from his investigation from the books of the Company such an indebtedness at the time was an impossibility and the conclusion is suggested that a settlement by the Board of Directors of Jesse H. Lippincott's account with the Company whereby Mr. Lippincott's assignee received from the Company 43 bonds of the denomination of \$1,000 each of the Company was a violation of the rights of the stockholders and creditors

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of the Company and that before all rights of action of the Company shall be disposed of by this Court it should be ascertained what if any is the liability of the directors for such issue and whether the claimants who have presented the said bonds to the receiver as debts of the Company are bona fide holders thereof for value and without notice of any defect in such issue;

IX: That it appears from such examination of the books of the Company as the said Boston has been able to make that on or about the 17th day of November, 1891, Thomas R. Lombard advanced to Jesse H. Lippincott cash to the extent of \$20,000. and it does not appear so far as the said Boston has been able to ascertain that such advance was for the purposes or on the credit of the Company; and it appears that on the 1st day of May, 1892 Thomas R. Lombard claimed that \$14,276.75 was due and owing on account of his said advance and the Board of Directors on the said first day of May, 1892, or thereabouts issued to Thomas R. Lombard in part payment of the said debt of Jesse H. Lippincott 10 of its bonds of the denomination of \$1,000 each and the said Boston suggests that it is highly advisable that the rights of action if any, arising out of the said issue shall be ascertained with reasonable certainty before they shall be extinguished by any sale made under the order of this Court ;

X: That it appears from the circular letter hereinbefore referred to as C.A.B's Exhibit No. 1, that on the 20th day of January, 1890, among the resources of the Company was the sum of \$226,775.72 secured by collateral and loaned upon call. The said Boston has required of the Receiver that he state to whom this loan was made and upon what collateral and the Receiver has replied that so far as he is able to learn the loan was made to Jesse H. Lippincott and that the collateral was the stock of the Company; and so far as the said Boston has been able to ascertain the loan was never repaid and the collateral does not now appear to be in the possession of the Company.

XI: That on account of the limited time allowed for this investigation the said Boston has been unable to ascertain with the same definiteness the relations between the North American Phonograph Company and the American Graphophone Company, but inasmuch as the North American Phonograph Company formerly owned valuable rights secured from the American Graphophone Company and the same have since been repudiated by the American Graphophone Company and the impression prevails and is fostered by the American Graphophone Company that users of the Phonograph will be prosecuted for infringement of patents by the American Graphophone Company and in as much as large payments appear on the books of the North American Phonograph Company to have been made to the American Graphophone

The said Boston suggests that the relations between the American Graphophone Company and the North American Phonograph Company should be thoroughly investigated and the rights of the North American Phonograph Company ascertained to a reasonable certainty before a bid for the assets and rights of action of the North American Phonograph Company shall be accepted

XII: That the books of the North American Phonograph Company show that very large sums of money were paid by various persons and corporations for franchises during the early history of the North American Phonograph Company; and many stockholders have bought stock for value and on the representations of the letter heretofore referred to as C.A.B's Exhibit No. 1;

And the said Boston suggests that it is incumbent upon this Court to protect the rights of those persons against the effects of the transactions hereinbefore referred to which seem to have sacrificed those rights and interests without adequate or lawful consideration;

XIII: That the said Boston is aware that possibly some and perhaps many of the transactions hereinbefore referred to as requiring investigation may be explained to the satisfaction of the Chancellor upon such investigation, but he contends that such investigation should be

made to the end that the Chancellor, the Receiver and all other parties in interest as well as all bidders may be fully advised at least to a reasonable certainty of what is for sale.

XIV: That Mr. Edison in his petition states that he is unable to understand the bearing of the said Boston's reference to the combination of the Kinetoscope with the Phonograph, but the petition shows that Mr. Edison has apprehended all that the said Boston meant by his reference thereto in that he shows that the use of the Phonograph in combination with the Kinetoscope will involve a use of the invention or inventions belonging to the North American Phonograph Company.

WHEREFORE, the said Boston prays that the acceptance of the said bid be suspended until the investigation herein prayed for be made;

That the Receiver be directed by competent experts under his direction and under the direction of competent and impartial counsel to be designated by the Chancellor, to investigate the history of the transactions of the Company since its organization with a view to reporting to this Court full and categorical answers to the questions heretofore submitted by Charles A. Boston to the Receiver and a full report upon the rights of action in this answer and petition outlined; and that testimony to be taken in this proceeding so far as any

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party may desire to produce the same in his own behalf
and so far as the receiver under advice of counsel
shall deem it necessary in order to make his report
as aforesaid; and that pending the making of his report
the Receiver be instructed to take such steps as he may
be advised by such Counsel are necessary or proper
to prevent a transfer of property or rights in or to which
the North American Phonograph Company may from his examina-
tion appear to have an interest to any person or in any
way that will prejudice the rights of the North American
Phonograph Company as they now exist.

And as in duty, &c.

Charles A. Boston
in person

STATE OF NEW JERSEY

County of Hudson, to-wit:

On this 29th day of April 1895 personally appeared before me, a master in chancery in Jersey City, in Hudson County, Charles A. Boston, to me known and known to me to be the same person described in and who executed the foregoing instrument and her thereupon acknowledged to me that he executed the same for the purposes therein set forth;

And the said Charles A. Boston, being duly sworn, did depose and say that he had read the foregoing answer and petition and knew the contents thereof, and that the same were true to his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

Sworn to before me this
29th day of April 1895.

Charles A. Boston

J. R. Boddy

Master in Chancery

Chancellor in his order of the 17th inst., I direct to you the following specific questions to be answered by you; but if you are acquainted with any other facts material to this position, although not covered by the specific inquiries following, I request that you acquaint the Chancellor with the same.

1. - I wish to be permitted to see all contracts subsisting between Jesse H. Lippincott or the North American Phonograph Company and Thomas A. Edison on January 20th, 1890, and all contracts subsequently made between Thomas A. Edison and the North American Phonograph Company which relate to the rights or obligations of the North American Phonograph Company.

2. - I wish to be permitted to see all contracts made between the North American Phonograph Company or Jesse H. Lippincott and the Edison Phonograph Works which relate to the rights or obligations of the North American Phonograph Company.

3. - I wish to be informed how many of the bonds of the North American Phonograph Company are now outstanding, to whom they were issued, by what authority and upon what consideration; and, if the consideration was a pre-existing claim or debt, how and when such claim or debt arose.

4. - I wish to have, or to be permitted to make, a copy of the minutes of the Board of Directors or other authority for the issue of the said bonds.

5. - I wish to know whether any claim has been

proven or made before you, as receiver, in favor of the Edison Phonograph Works, or its assigns; and, if so, what is the amount of such claim and how did it arise?

6. - I wish a statement of the assets and claims against the Company as ascertained by you.

7. - I wish to know whether Mr. Edison has ever received from the North American Phonograph Company any sum of money in excess of the specific sums which he was to receive as reimbursements for his expenses in experimenting with the phonograph and for its improvement; and if so, the amount of such sums and the purposes for which they were paid.

8. - I wish to know whether Mr. Edison has to your knowledge obtained any patents for improvements on the phonograph or made any improvements on the phonograph since January 20th, 1890; and, if so, what such patents or improvements are; whether Mr. Edison was under contract to assign such patents or improvements, or any of them, to or for the use of the North American Phonograph Company.

9. - I wish to be permitted to see any and all contracts with the American Graphophone Company in which the North American Phonograph Company had or has a beneficial interest.

10. - I wish to know whether, so far as you are informed, any improvements have been made since January 20th, 1890, in the graphophone, and whether the North American Phonograph Company has obtained the beneficial use of such improvements.

11. - On the 20th of January 1890, the North American Phonograph Company made a statement of the resources and liabilities as follows:

"RESOURCES.

Invested permanently in machines	\$253,001.55
Cash	50,725.39
Call Loans, secured by collateral	226,775.73
Advanced to manufacturers over and above merchandise delivered	65,572.82
Book accounts	19,059.20
Due from sub-Companies organized and under contract	168,733.57
Due from companies under process of organization	100,000.00
	<u>\$883,868.26</u>

LIABILITIES.

Merchandise	\$ 4,232.80
Balance	<u>879,635.36</u>
	<u>\$883,868.26</u>

There are no other outstanding liabilities of this Company except on a manufacturing contract, which is limited to \$106,500 and will be offset by delivery of machines."

Are you aware whether such statement was true in fact?

12. - If the foregoing statement was true in fact, what disposition was made of the resources of the Company as shown in said statement?

13. - Annexed to my verified statement of objections to the acceptance of Mr. Edison's bid for the remaining assets of the North American Phonograph Company is a copy of a statement issued by the North American Phonograph Company on the 20th of January 1890 from which the foregoing statement of resources and liabilities was taken.

and this and a few of the following questions where they refer to a statement, refer to the statement aforesaid of the 20th of January 1890.

In the statement of the 20th of January 1890 it was said that the Company was to receive a further sum of \$283,733.

Did the North American Phonograph Company receive the \$283,733 shown in the said statement to be paid thereafter by sub-companies?

14. - Is the North American Phonograph Company the owner in its own name, or beneficially, of \$1,400,000 of the capital stock of the sub-companies? If not, what disposition has been made of the said stock? The statement aforesaid showed that the Company was to receive that quantity of stock from trustees.

15. - Was stock in the various local companies to the amount of \$1,400,000 deposited with the Central Trust Company ever delivered to the North American Phonograph Company? If so, what disposition has been made of the said stock? The statement aforesaid showed that such stock had been or was to be deposited with the Central Trust Company to be delivered to the North American Phonograph Company at the end of five years.

16. - Were the bonds of the North American Phonograph Company secured by mortgage? If they were, and you have a copy of the said mortgage, I request that you permit me to see it. If you have not a copy, I request that you inform me where and when such mortgage was recorded.

the minor companies referred to in the statement above mentioned, and that you state which, if any, of said companies are in active operation and which are, so far as you are informed, insolvent, and how much of the stock of each company is owned by the North American Phonograph Company.

18. - The statement hereinbefore referred to showed that 6,000 shares of the Company's stock had been put into the hands of trustees for the future use and benefit of the Company, if needed. Who were the said trustees and what disposition, if any, was ever made of the said 6,000 shares of stock?

19. - The said statement showed that it was then expected that the North American Phonograph Company would realize a handsome sum from the formation of the subcompanies in Canada. Was any sub-company formed? and, if so, what did the North American Phonograph Company realize from its formation?

20. - Are the Edison Phonograph Works now manufacturing phonographs? and, if so, by what authority do they claim that right?

21. - Who were the directors of the North American Phonograph Company during the years 1890, 1891, 1892, 1893 and 1894?

22. - What salaries were paid to any of the directors during the years mentioned?

23. - What patents does the North American Phonograph Company own, and when will they severally expire?

24. - What patents, so far as you are informed, does the Edison Phonograph Company own, and when do they expire?

25. - What is the alleged foundation of the debt or debts proved by Mr. Edison against the North American Phonograph Company before you?

26. - How much money has been paid since January 20th 1890 to the Edison Phonograph Works by the North American Phonograph Company?

Very truly yours,

(Signed)

Charles A. Boston.